

**SERVED: November 7, 2024**

**U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, DC**

In The Matter Of:	)	
	)	Docket No. G13-23-021
John Nunez	)	
	)	Case No. 2022FS050509
Respondent	)	

**INITIAL DECISION**

**1. Pertinent Procedural History**

On September 16, 2022, the Complainant issued a Notice of Proposed Civil Penalty in the amount of \$10,500 to the Respondent, alleging his behavior aboard American Airlines Flight 1124 on June 3, 2022, violated 14 C.F.R. § 121.580. On March 22, 2023, the Complainant served a Final Notice of Proposed Civil Penalty for the same amount.

In an April 6, 2023 email, the Respondent requested a hearing in this matter. On April 26, 2023, the Complainant filed a complaint.

On June 8, 2023, the undersigned judge issued an Order to Show Cause and Provide Answer (“Show Cause Order”) after not receiving an answer to the complaint from the Respondent within 30 days of the service of the complaint. The Show Cause Order required a response from the Respondent by July 10, 2023. After the Respondent failed to comply with this order, the undersigned judge issued an Order Setting Prehearing Conference on July 13, 2023, to discuss, *inter alia*, the Respondent’s failure to file a timely answer during a prehearing conference on September 7, 2023. On September 6, 2023, the Respondent emailed the Office of Hearings and explained that he had had a health issue as well as other circumstances that had prevented him from being able to engage in these proceedings. In a subsequent email, the Respondent attached an answer that included a general denial of the allegations. During the September 7, 2023 prehearing conference, the undersigned judge explained that the Respondent’s general denial did not constitute an answer, and gave the Respondent until September 22, 2023, to file a sufficient answer and a more detailed explanation for his failure to file a timely answer. On September 8, 2023, the Respondent filed his answer, as well as an explanation for his failure to do so timely.

On June 13, 2024, the Respondent filed a Motion to Dismiss, to which the Complainant filed an opposition on June 21, 2024. The undersigned judge issued an Order Denying Respondent's Motion to Dismiss on July 2, 2024. In response that same day, the Respondent submitted an email, in which he asked for reconsideration of this denial or an interlocutory appeal. The undersigned judge issued an Order Denying Respondent's Request for Reconsideration or Interlocutory Appeal later that same day.

Also on July 2, 2024, the undersigned judge provided notice that the hearing in this matter would be held virtually through the use of videoconferencing software, beginning on October 8, 2024.<sup>1</sup>

At the hearing, Kimberly R. Villiers appeared on behalf of the Complainant; the *pro se* Respondent, John Nunez, appeared on his own behalf.

Based upon the evidence presented at the hearing and the applicable law, the undersigned judge has come to the following decision.

## **2. Summary of Complainant's Allegations**

The Complainant alleges that the Respondent, while a passenger aboard American Airlines flight number 1124 on or about June 3, 2022, from Barranquilla, Colombia, to Miami, Florida, acted in a manner that interfered with crewmembers who were performing their duties on board the aircraft and further threatened crewmembers while they were in performance of their duties.<sup>2</sup> Specifically, the Complainant alleges that, after being denied use of the business class lavatory, the Respondent approached the main cabin lavatory where he yelled at both flight attendants stationed at the rear of the aircraft.<sup>3</sup> According to the Complainant, the flight attendants felt threatened by the Respondent's aggressive behavior.<sup>4</sup> During the course of the flight, the Respondent allegedly requested an alcoholic drink, which he was denied, at which point the Respondent followed the flight attendant to the rear of the aircraft, yelling and refusing to follow instructions to return to his seat.<sup>5</sup> The Complainant further alleges that the Respondent remained argumentative and aggressive even when the lead flight attendant went to talk to him, resulting in

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<sup>1</sup> The Complainant waived any objection to a virtual hearing and the Respondent did not raise any objection to a virtual hearing. See Dec. 15, 2023 Complainant's Proposed Litigation Schedule; Jan. 4, 2024 Prehearing Conference Report; and Jan. 4, 2024 email from Respondent on file with the Office of Hearings.

<sup>2</sup> See Complaint at 1-3.

<sup>3</sup> See Complaint at 2.

<sup>4</sup> See Complaint at 2.

<sup>5</sup> See Complaint at 2.

the need to reseat two passengers away from the Respondent.<sup>6</sup> After crewmembers reported the Respondent's disruptive behavior to the captain, the flight was diverted back to Barranquilla, Colombia, where law enforcement met the aircraft at the captain's request.<sup>7</sup> The Complainant alleges that the Respondent behaved in a manner that interfered with flight crewmembers in the performance of their duties and threatened a crewmember, thus violating 14 C.F.R. § 121.580.<sup>8</sup>

For these alleged violations, the Complainant seeks a civil penalty of \$10,500.<sup>9</sup>

### **3. Standard of Proof**

The pertinent regulations at 14 C.F.R. § 13.224(a) and (c) place the burden of proof on the agency, except in the case of an affirmative defense, at which time the burden shifts to the party asserting the affirmative defense. In accordance with 14 C.F.R. § 13.223, the burden of proof in a civil penalty action is a "preponderance of reliable, probative, and substantial evidence." Because circumstantial evidence can be reliable, probative, and substantial,<sup>10</sup> a party may use circumstantial evidence to sustain its burden of proof.<sup>11</sup>

### **4. Factual Findings**

After considering the pleadings filed in this case and the testimony and evidence admitted at the hearing, the undersigned judge finds the following facts to have been proven by a preponderance of the evidence:<sup>12</sup>

On June 3, 2022, the Respondent was a passenger on American Airlines flight number 1124, scheduled to depart from Barranquilla, Colombia, and land in Miami, Florida.<sup>13</sup> The subject flight was operated under 14 C.F.R. Part 121.<sup>14</sup> The flight crew included Captain Byron Jaffe, lead flight attendant/purser Rosa Celi, and flight attendants Maria Quiroz and Ana Maria Sanchez.<sup>15</sup> As the purser, Ms. Celi was responsible for the business class section of the aircraft, while Ms. Quiroz and Ms. Sanchez were responsible for the main cabin of the aircraft and sat in

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<sup>6</sup> See Complaint at 2-3.

<sup>7</sup> See Complaint at 3.

<sup>8</sup> See Complaint at 3.

<sup>9</sup> See Complaint at 4.

<sup>10</sup> See *In re America West Airlines*, FAA Order No. 96-3 at 31 (Decision and Order, Feb. 13, 1996) (referring to certain circumstantial evidence as "strong").

<sup>11</sup> See *In re Continental Airlines, Inc.*, FAA Order No. 90-12 at 20 (Decision and Order, Apr. 25, 1990).

<sup>12</sup> Any fact alleged in the complaint, a witness's testimony, or a statement admitted into evidence that is not included in these findings was not found to have been proven by a preponderance of the evidence.

<sup>13</sup> See Hearing Transcript at 20-21; Complaint at 1; Answer at 1; and Ex. C-3.

<sup>14</sup> See Hearing Transcript at 119-120; Complaint at 1; and Answer at 1.

<sup>15</sup> See Hearing Transcript at 21, 28, 50, and 119; Ex. C-5; Ex. C-6; Ex. R-8; and Ex. R-9.

jump seats in the rear of the aircraft.<sup>16</sup>

The Respondent boarded the aircraft in Barranquilla as a non-revenue passenger (also referred to as a “D3 passenger”) and was seated in his assigned seat, seat 17C, located in the main cabin of the aircraft.<sup>17</sup> As a non-revenue passenger, the Respondent had obtained his ticket by only paying for the taxes on the ticket price due to his father’s long-time employment by American Airlines.<sup>18</sup>

On the date of the flight, the Respondent was suffering from benign prostatic hyperplasia (an enlarged prostate) as well as kidney stones, which resulted in the need to use the bathroom to urinate frequently with urgency.<sup>19</sup> After takeoff, the Respondent left his seat and tried to use the lavatory located in the business class section at the front of the aircraft.<sup>20</sup> The purser told the Respondent that he could not use the business class lavatory because he was seated in the main cabin.<sup>21</sup> The Respondent became upset and frustrated after being denied access to the business class lavatory.<sup>22</sup> Because of his frequent flyer status, the Respondent believed he should have been allowed to use the business class lavatory and so felt he had been unjustly denied access.<sup>23</sup> He then walked to the rear of the aircraft to use one of the lavatories in the main cabin.<sup>24</sup> When he got to the rear of the aircraft, the Respondent complained to Ms. Quiroz and Ms. Sanchez about the fact that he had been denied access to the business class lavatory.<sup>25</sup> Both flight attendants were seated in jump seats in the rear galley at that time while the Respondent stood over them.<sup>26</sup> The Respondent yelled at the flight attendants while expressing his frustration about being denied access to the business class lavatory.<sup>27</sup> The Respondent complained about his perceived mistreatment, waving his hands while speaking loudly, including stating, “nobody treats me like shit.”<sup>28</sup> In response to the Respondent’s tirade, the flight attendants told the

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<sup>16</sup> See Hearing Transcript at 21-22.

<sup>17</sup> See Hearing Transcript at 33, 64, and 156; Ex. C-5; Ex. C-6; and Ex. R-9.

<sup>18</sup> See Hearing Transcript at 33 and 140.

<sup>19</sup> See Hearing Transcript at 140 and 143; Ex. R-3a; and Ex. R-3d. While the Respondent’s medical records postdate the date of the incident, Complainant did not provide any evidence to rebut the Respondent’s credible testimony that he suffered from this condition on the date of the flight.

<sup>20</sup> See Hearing Transcript at 143 and 156-158 and Ex. R-9.

<sup>21</sup> See Hearing Transcript at 21; Ex. C-6; and Ex. R-9.

<sup>22</sup> See Hearing Transcript at 158.

<sup>23</sup> See Hearing Transcript at 157-158.

<sup>24</sup> See Hearing Transcript at 21-23 and 158 and Ex. R-9.

<sup>25</sup> See Hearing Transcript at 21 and 158 and Ex. R-9.

<sup>26</sup> See Hearing Transcript at 21 and Ex. R-9.

<sup>27</sup> See Hearing Transcript at 21, 23-24, 150, and 158-159; and Ex. C-6; and Ex. R-9.

<sup>28</sup> See Hearing Transcript at 21, 24, 29, 144, and 145 and Ex. R-9.

Respondent that he should know the rules and that he was acting inappropriately when he should in fact be on his best behavior as a non-revenue passenger.<sup>29</sup> The Respondent then used one of the lavatories at the rear of aircraft and then returned to his seat.<sup>30</sup> Sometime thereafter, the Respondent got up from his seat and once again went to the back of the aircraft to use the lavatory.<sup>31</sup> As he approached the rear of the aircraft, Ms. Sanchez placed the beverage cart in the aisle to block him from approaching the flight attendants, denying him access to the lavatory.<sup>32</sup> The Respondent expressed his frustration at not being able to use the lavatory, once again yelling at the flight attendants.<sup>33</sup> This included stating that Ms. Quiroz was a “fucking idiot” and “stupid.”<sup>34</sup>

At some point during the flight, the Respondent requested the flight attendants provide him an alcoholic beverage, which the flight attendants refused to serve him because they suspected that he may have been intoxicated due to his level of agitation.<sup>35</sup> The Respondent felt he was entitled to a beverage given his status as a platinum executive pro passenger, American Airlines’ highest level of frequent flyer status, at the time of the flight.<sup>36</sup> This denial added to the Respondent’s level of frustration.<sup>37</sup> The flight attendants subsequently decided that they could not complete beverage service for the flight because of their interactions with the Respondent.<sup>38</sup>

After returning to his seat from his second trip to the back of the aircraft, the Respondent received a disturbance card from the purser, Ms. Celi.<sup>39</sup> In response, he once again expressed his frustration in a forceful manner.<sup>40</sup> Ms. Celi then reported this interaction to the captain.<sup>41</sup> Based upon the reports he had received regarding the Respondent’s behavior, Captain Jaffe decided to divert the plane and return to Barranquilla, Colombia.<sup>42</sup> Upon landing in Barranquilla, the Respondent deplaned in the company of an American Airline employee.<sup>43</sup> As he left the aircraft,

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<sup>29</sup> See Hearing Transcript at 26 and Ex. R-9.

<sup>30</sup> See Hearing Transcript at 22-23 and Ex. R-9.

<sup>31</sup> See Hearing Transcript at 150 and 163.

<sup>32</sup> See Hearing Transcript at 26, 27, 150, and 163 and Ex. C-14.

<sup>33</sup> See Hearing Transcript at 26, 28, and 164.

<sup>34</sup> See Hearing Transcript at 26-27 and Ex. R-9.

<sup>35</sup> See Hearing Transcript at 22, 38, and 151-152; Ex. C-6; and Ex. R-9.

<sup>36</sup> See Hearing Transcript at 168-171.

<sup>37</sup> See Hearing Transcript at 168-171.

<sup>38</sup> See Hearing Transcript at 30.

<sup>39</sup> See Hearing Transcript at 27; Ex. C-6; and Ex. R-9.

<sup>40</sup> See Hearing Transcript at 27; Ex. C-6; and Ex. R-9.

<sup>41</sup> See Hearing Transcript at 28 and Ex. C-5.

<sup>42</sup> See Hearing Transcript at 38; Ex. C-5; Ex. R-9; Complaint at 3; and Answer at 2.

<sup>43</sup> See Ex. C-15 and Ex. R-5a.

the Respondent told the captain, “I’m a non-rev who wanted a coke.”<sup>44</sup> After exiting the aircraft in Barranquilla, the Respondent requested a breathalyzer test.<sup>45</sup> The results of the test revealed that the Respondent was not intoxicated at the time he deplaned.<sup>46</sup>

## **5. Significant Credibility Determinations**

In coming to a decision in this case, the undersigned judge made the following significant credibility determinations.

*a. The testimony and statement from Maria Quiroz are generally credible.*

The testimony provided by Ms. Quiroz remained consistent with the information provided in her written statement made close in time to the incident. For example, Ms. Quiroz’s testimony that shortly after takeoff the Respondent came to the rear of the aircraft and yelled at her and Ms. Sanchez about being denied access to the business class lavatory, including saying that “nobody treats me like shit,” was consistent with the statement Ms. Quiroz wrote on June 4, 2022.<sup>47</sup> There are additional similarities between Ms. Quiroz’s testimony and her written statement in how she described the Respondent getting frustrated after being denied the alcoholic beverage he requested, Ms. Sanchez using the beverage cart as a barrier when the Respondent tried to access the rear lavatory a second time, and Ms. Celi delivering a disturbance notice to the Respondent given his behavior.<sup>48</sup> Further, in both her statement and her testimony, Ms. Quiroz explained that the captain made the decision to return to Barranquilla based upon reports he received regarding the Respondent’s behavior.<sup>49</sup> This consistency over time increases her testimony’s credibility.

*b. The Respondent’s testimony is credible.*

The undersigned judge acknowledges that the Respondent is a party to this proceeding and so is therefore biased, but that does not mean his testimony is inherently unreliable. The testimony of respondents should be subjected to the same credibility analysis as any other witness, which includes bias as one of the many factors to consider. Most notably, the Respondent’s testimony was consistent with other evidence in the record, making it more credible. For example, the

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<sup>44</sup> See Ex. R-5a.

<sup>45</sup> See Hearing Transcript at 187-188.

<sup>46</sup> See Hearing Transcript at 125, 186, and 194-195.

<sup>47</sup> Compare Hearing Transcript at 21 with Ex. R-9.

<sup>48</sup> Compare Hearing Transcript at 22, 26-28, 38, and 39 with Ex. R-9.

<sup>49</sup> Compare Hearing Transcript at 28-29, 38, 43, and 46-47 with Ex. R-9.

Respondent's testimony that he suffers from an enlarged prostate and kidney stones that result in the need to use the bathroom frequently is consistent with his medical records.<sup>50</sup> Similarities exist between the testimony of Mr. Nunez and Ms. Quiroz in that they both agree Mr. Nunez left his seat shortly after takeoff to use the bathroom, Mr. Nunez used the lavatory in the rear of the aircraft after being denied access to the business class lavatory, and the Respondent was not served the alcoholic beverage he requested.<sup>51</sup> Additionally, Mr. Nunez's testimony that he was not intoxicated during the subject flight is supported by the credible testimony of Major Diego Pineda. Major Pineda explained that the Respondent appeared sober and calm upon deplaning and that the results of a breathalyzer test performed after the Respondent exited the aircraft upon landing in Barranquilla found the Respondent was not intoxicated.<sup>52</sup>

Additionally, the Respondent was willing to admit facts that did not put him in the best light. Specifically, the Respondent admitted that he was frustrated and felt disrespected by the flight attendants given his non-revenue status.<sup>53</sup> Similarly, the Respondent admitted that he did tell the flight attendants that they couldn't treat him like "shit,"<sup>54</sup> and acknowledged that he is a passionate person who talks with his hands.<sup>55</sup> He further admitted talking loudly to the flight attendants.<sup>56</sup> This willingness to admit facts against his interests increases the overall credibility of his testimony.

*c. Ms. Sanchez's testimony is not supported by the record and so is less credible.*

Ms. Sanchez's credibility is negatively impacted by the failure of much of her testimony to be included in her written report and the fact that several of her assertions made while testifying are not supported by the record as a whole and are inconsistent with other evidence in the record. In completing this analysis, the undersigned judge first notes the lack of detail provided in Ms. Sanchez's written statement, which was only two sentences long.<sup>57</sup> And second, and most importantly, the undersigned judge observes there are numerous instances where the evidence in the record demonstrates her testimony appears exaggerated. For example, Ms. Sanchez testified that she had to move all of the passengers seated near the Respondent because they were afraid

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<sup>50</sup> See Ex. R-3a and Ex. R-3d.

<sup>51</sup> Compare Hearing Transcript at 149-152 with Hearing Transcript at 21, 27, and 38.

<sup>52</sup> See Hearing Transcript at 184-186, and 190.

<sup>53</sup> See Hearing Transcript at 141, 145, 150, and 158-159.

<sup>54</sup> See Hearing Transcript at 144.

<sup>55</sup> See Hearing Transcript at 145.

<sup>56</sup> See Hearing Transcript at 164.

<sup>57</sup> See Ex. R-8.

of him.<sup>58</sup> A video depicting the Respondent as he was asked to leave the plane, however, clearly shows passengers seated in the seats around him.<sup>59</sup> In another example, the evidence in the record does not support Ms. Sanchez's assertion that the Respondent may have been going to hit her at the time she used the beverage cart to block his path to the lavatory.<sup>60</sup> The video she took at the time she reportedly feared for her safety does not show the Respondent in close vicinity to her or the beverage cart, nor does it document him screaming any profanities at her or Ms. Quiroz.<sup>61</sup> Instead, he appears to be simply walking back to his seat. In considering the record as a whole, Ms. Sanchez's testimony seems embellished and exaggerated, rather than consistent with and supported by the other evidence in the case.

*d. The written statement of Ms. Celi is credible.*

The statement provided by Ms. Celi was consistent with the testimony provided by Ms. Quiroz and Mr. Nunez, as well as the written statement provided by Ms. Quiroz. For example, Ms. Celi's assertions that the Respondent yelled at the flight attendants aboard the aircraft and was denied the alcoholic beverage he requested is corroborated by the testimony provided at the hearing by Ms. Quiroz and Mr. Nunez, as well as Ms. Quiroz's written statement.<sup>62</sup> Additionally, Ms. Celi's report that the Respondent was upset after being denied access to the business class lavatory was consistent with the testimony provided by Ms. Quiroz at the hearing and Ms. Quiroz's written statement.<sup>63</sup> Further, the testimony and written statement of Ms. Quiroz support the assertions in Ms. Celi's written statement that she provided the Respondent with a disruptive passenger notice and that the flight crew did not initially know the Respondent was flying as a non-revenue passenger.<sup>64</sup> Lastly, Ms. Celi's assertion in her written statement that the Respondent felt disrespected was corroborated by the Respondent's credible testimony at the hearing.<sup>65</sup>

*e. The testimony of Rebecca Habib merits little to no weight.*

Although Ms. Habib was not a party to this proceeding, she exhibited a strong bias against the Respondent given her dislike for the Respondent after observing him while in the VIP lounge

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<sup>58</sup> See Hearing Transcript at 59.

<sup>59</sup> See Ex. C-15.

<sup>60</sup> See Hearing Transcript at 54 and 56-57.

<sup>61</sup> See Ex. C-14.

<sup>62</sup> Compare Ex. C-6 with Hearing Transcript at 21, 22, 24, 25, 38, 151-152, and 164 and Ex. R-9.

<sup>63</sup> Compare Ex. C-6 with Hearing Transcript at 21 and Ex. R-9.

<sup>64</sup> Compare Hearing Transcript at 26-28, 33, and 39 and Ex. R-9 with Ex. C-6.

<sup>65</sup> Compare Ex. C-6 with Hearing Transcript at 141.



prior to the flight. Ms. Habib admitted that she had no idea what the Respondent consumed while in the VIP lounge, but was upset with how loud and boisterous she felt he was while in the lounge.<sup>66</sup> Significantly, the Respondent's behavior in the VIP lounge is not relevant to the issue in this case, which is whether the Respondent interfered with, and threatened, flight crewmembers in the performance of their duties during the flight. Further, there is nothing in the record to support Ms. Habib's testimony that the Respondent, who was seated directly behind her, was kicking and moving her seat during the flight.<sup>67</sup> Specifically, notes from a phone call between Ms. Habib and Aviation Safety Inspector Ronny Moon on December 5, 2022, include no mention of the Respondent kicking Ms. Habib's seat during the flight.<sup>68</sup>

Additionally, little weight is given to the testimony and report of Ms. Habib that the Respondent was yelling at the flight attendants in the rear of the aircraft given her admission at the hearing that she does not hear well and could only hear raised voices but was unable to distinguish whether it was the Respondent or the flight attendants.<sup>69</sup> Similarly, Ms. Habib's testimony that law enforcement officers boarded the aircraft and escorted the Respondent off the aircraft is contradicted by two of the videos submitted into evidence, which show the Respondent deplaning in the company of an airline employee while no law enforcement personnel were present on the aircraft.<sup>70</sup> Lastly, the undersigned judge notes that Ms. Habib was unable to identify the Respondent when shown one of the videos submitted into evidence.<sup>71</sup>

Given Ms. Habib's apparent bias towards the Respondent and lack of credibility discussed above, the undersigned judge placed little to no weight on her testimony.

## **6. Discussion of Alleged Violations**

The Complainant has alleged that the Respondent's behavior during the flight interfered with the crewmembers' ability to perform their duties and that the Respondent threatened a crewmember, thus violating 14 C.F.R. § 121.580. Pursuant to 14 C.F.R. § 121.580, "[n]o person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft..." A crewmember is defined as "a person assigned to

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<sup>66</sup> See Hearing Transcript at 81-82.

<sup>67</sup> See Hearing Transcript at 83.

<sup>68</sup> See Ex. R-10.

<sup>69</sup> Compare Hearing Transcript at 84 and Ex. R-10 with Hearing Transcript at 93-94.

<sup>70</sup> Compare Hearing Transcript at 85, 94-95, and 102-103 with Ex. C-15 and Ex. R-5a.

<sup>71</sup> See Hearing Transcript at 95-96.

perform duty in an aircraft during flight time,” and the definition of a flight crewmember includes a pilot “assigned to duty in an aircraft during flight time.”<sup>72</sup> The Administrator has further held that “[t]here is no question that a flight attendant falls within Section 1.1’s definition of ‘crewmember.’”<sup>73</sup>

*a. The Respondent’s behavior on the aircraft interfered with the crewmember’s ability to perform their duties, thus violating 14 C.F.R. § 121.580.*

Over time, the Administrator has broadly construed what constitutes interference, finding several different actions to constitute interference with a crewmember’s duties. While finding a passenger interfered with a flight attendant’s duties when he placed an unwanted sandwich on the beverage cart two or three times because this action distracted the flight attendant from the performance of her duties, the Administrator emphasized the passenger’s “noncompliant attitude and his disregard for the safety rules.”<sup>74</sup> The Administrator has also found interference when a flight attendant “was unable to handle routine duties and emergencies at her assigned duty station” while dealing with the disruptive passenger.<sup>75</sup> In past cases, the Administrator has further found that refusing to comply with a flight attendant’s instructions, leaving the flight attendant upset and requiring her to brief the captain,<sup>76</sup> verbally abusive behavior,<sup>77</sup> and refusing to take a seat while the seatbelt sign was illuminated, despite orders to do so,<sup>78</sup> constitute interference with a crewmember’s duties in violation of 14 C.F.R. § 121.580.

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<sup>72</sup> 14 C.F.R. § 1.1.

<sup>73</sup> *In re Ignatov*, FAA Order No. 96-6 at 12 (Decision and Order, Feb 13, 1996).

<sup>74</sup> *See In re Mayer*, FAA Order No. 97-12 (Decision and Order, Feb. 20, 1997) (stating that distracting behavior cannot be tolerated on an airplane because it “distracts the flight crewmembers from the performance of their duties” and “undermines the authority of the flight attendants.”).

<sup>75</sup> *See In re Bengry*, FAA Order No. 2003-9 (Decision and Order, Sep. 12, 2003) (acknowledging that flight attendants “have critical safety duties” when affirming the administrative law judge’s finding that a passenger “interfered with the chief flight attendant’s duties by causing her absence from her regular tasks and by upsetting her, thereby substantially diminishing her ability to react to an emergency.”).

<sup>76</sup> *See In re Abrams*, FAA Order No. 2008-2 (Decision and Order, Jan. 28, 2008) (affirming a finding of interference where a passenger repeatedly refused to follow instructions from a flight attendant and stating that “[r]espect for the crew’s authority is essential on an aircraft, where crew and passengers are confined to a relatively small space far above the ground.”).

<sup>77</sup> *See In re Conger*, FAA Order No. 2007-8 (Decision and Order, Aug 2, 2007) (upholding a finding that a passenger’s “obstreperous and intolerable behavior” interfered with the flight attendants’ ability to perform their duties because they “were called away from their assigned duties for significant periods” and were “not able to function at a level needed to effectively manage an in-flight emergency.”).

<sup>78</sup> *See In re Wallaesa*, FAA Order No. 2013-2 (Decision and Order, May 14, 2013) (affirming a finding of interference when the passenger “prevented the crew from completing their duties” by “standing after the pilot turned on the ‘fasten seat belt sign’ and refusing to sit when asked” noting that the flight attendants were required to focus their attention on the disruptive passenger and were not “ready to attend to the needs of the other passengers in their assigned sections.”).

In this case, the preponderance of the evidence shows the Respondent engaged in behavior that distracted multiple flight attendants and interfered with their ability to perform their duties with his repeated angry complaints that were, in at least one instance, verbally abusive. By yelling loudly to express his frustration and telling Ms. Quiroz and Ms. Sanchez that he will not be treated like “shit,” as well as calling Ms. Quiroz a “fucking idiot” and “stupid,” the Respondent displayed a lack of respect for Ms. Quiroz and Ms. Sanchez’s authority. Further, the Respondent continued to distract Ms. Quiroz and Ms. Sanchez when he continued to express his frustration after being denied the alcoholic beverage he requested and discussing how he felt his treatment was inconsistent with what he merited given his frequent flyer status with American Airlines at the time of the flight. The flight attendants were further unable to complete their assigned duties when they decided to cancel beverage service due to the Respondent’s behavior. The Respondent could have waited until the aircraft had landed at its final destination to complain about his perceived mistreatment, rather than creating a disruption in the close confines of the aircraft while the airplane was thousands of feet in the air. The Respondent’s conduct distracted Ms. Quiroz and Ms. Sanchez from ensuring the safety of the cabin, their primary duty as flight attendants.

Notably, the Respondent seems to misunderstand the central role of the flight attendants in maintaining the safety of the cabin while in flight. Flight attendants must primarily be able to maintain the safety of the cabin so that they can deal with any legitimate emergency. While the Respondent may have had reason to complain about the quality of service he was receiving on the flight,<sup>79</sup> he did not do so in the proper manner or at the proper time and instead distracted the flight attendants from being able to focus on their crucial safety duties.

In consideration of the Administrator’s findings in past cases, the undersigned judge finds that the Respondent interfered with the performance of the flight crewmembers’ ability to perform their duties aboard the aircraft, thereby violating 14 C.F.R. § 121.580.

*b. The Complainant failed to prove the Respondent threatened any of the flight crewmembers.*

The Administrator has applied an ordinary and reasonable person standard when determining

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<sup>79</sup> The undersigned judge has not made any findings on whether the flight attendants’ customer service met the standards set by their employer as this question is beyond the scope of this proceeding.

whether a Respondent's behavior rises to the level of being intimidating or threatening.<sup>80</sup> Following a review of the record, the undersigned judge finds that the Complainant's allegation that the Respondent threatened a crewmember was not proven by a preponderance of the evidence.

The Complaint does not specify which flight crewmember was threatened by the Respondent. Ms. Quiroz did not testify at the hearing to feeling threatened by the Respondent, nor did she mention feeling threatened by the Respondent in her written statement. Ms. Celi's written statement also does not mention her feeling threatened. Ms. Sanchez testified that she feared the Respondent might hit her, but, as discussed in detail above, Ms. Sanchez's testimony lacks credibility, especially her expressed fear of physical violence. The video Ms. Sanchez took during the flight at the time she reportedly feared for her safety does not show the Respondent in close vicinity to her or the beverage cart, nor does it document him threatening her in any way. Additionally, as discussed above, video evidence in the record depicts the Respondent calmly deplaning after the aircraft returned to Barranquilla, without police intervention, and he was described as calm and cooperative by Major Diego Pineda after getting off the aircraft.

## **7. Civil Penalty**

Because the undersigned judge has found that the Respondent violated 14 C.F.R. § 121.580, the remaining issue is determining the amount, if any, of the appropriate civil penalty to be assessed for this conduct. The Complainant seeks a total civil penalty of \$10,500 for the violations as alleged in the complaint.<sup>81</sup> The burden of justifying the proposed civil penalty falls upon the Complainant.<sup>82</sup> In attempting to meet this burden, the Complainant provided no testimonial evidence about how the proposed civil penalty amount was assessed. In closing argument, Complainant's counsel pointed to the FAA civil penalty guidance, found at FAA Order No. 2150.3C,<sup>83</sup> as the method for calculating the proposed penalty and walked through the considerations that resulted in the Complainant's proposed penalty.

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<sup>80</sup> See *In re Bengry*, FAA Order No. 2003-9 at 5 (Decision and Order, Sep. 12, 2003) (concluding that "many ordinary, reasonable people would find it intimidating to be photographed by someone threatening them with a lawsuit and negative media exposure."). See also *In re Stout*, FAA Order No. 98-12 at 9 (Decision and Order, June 16, 1998) (affirming the administrative law judge's finding that the Respondent committed violations based upon the flight attendant's reasoned and conscientious behavior.).

<sup>81</sup> See Complaint at 4.

<sup>82</sup> See *In re Northwest Airlines, Inc.*, FAA Order No. 1990-37 at 7 (Decision and Order, Nov. 7, 1990) (finding the FAA bore the burden of justifying the amount of the civil penalty it sought.).

<sup>83</sup> An excerpted portion of the guidance was admitted as Ex. C-17.

An appropriate civil penalty must reflect the totality of the circumstances surrounding the violation, while providing enough substance to serve as a deterrent to both the current violator and the industry as a whole in order to promote the goal of safety.<sup>84</sup> Section g of Paragraph 6 of Chapter 9 of FAA Order No. 2150.3C provides a non-exhaustive list of mitigating or aggravating factors and elements that may be considered:

1. degree of hazard; 2. Violation history; 3. Level of certificate and experience; 4. Compliance disposition of violator; 5. Systematic/isolated violations; 6. Corrective action; 7. Inadvertence; 8. Voluntary reporting of violations; and 9. Criminal conviction.<sup>85</sup>

While the undersigned judge is not expressly required to follow the provisions of FAA Order No. 2150.3C,<sup>86</sup> it does provide guidance.<sup>87</sup> Further, the Administrator has stated that “similar criteria should be considered in assessing civil penalties in non-hazardous materials types of cases”<sup>88</sup> to the following statutorily required factors in considering a civil penalty involving hazardous materials violations:

(1) the nature, circumstances, extent, and gravity of the violation; (2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and (3) other matters as justice may require.<sup>89</sup>

The undersigned judge considered all of the pertinent factors to assess a civil penalty that will deter future violations by the Respondent and members of the flying public. In considering the relevant factors, it is important to note that the Respondent did not provide evidence of financial hardship regarding his ability to pay a sanction.

In closing argument, Complainant’s counsel explained that, in determining the proposed civil penalty, the Complainant deemed the applicable section of FAA Order No. 2150.3C to be “[i]nterference with crewmember,” a severity level 2 violation.<sup>90</sup> Complainant’s counsel further argued that the Respondent’s actions in this case were reckless or intentional.<sup>91</sup> In support of this argument, Complainant’s counsel contended that the Respondent “admitted to being upset

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<sup>84</sup> See *In re Toyota Motor Sales, USA, Inc.*, FAA Order No. 1994-28 at 11 (Order and Decision, Sept. 30, 1994); *In re Charter Airlines, Inc.*, FAA Order No. 1995-8 at 28 (Decision and Order, May 9, 1995).

<sup>85</sup> See Ex. C-17 at 7-9 (FAA Order No. 2150.3C at 9-7 through 9-9).

<sup>86</sup> See *Folsom’s Air Service, Inc.*, FAA Order No. 2008-11 at 14 (Decision and Order, November 6, 2008) (finding that because administrative law judges are not agency personnel, they are not expressly required to follow the guidance provided in FAA Order No. 2150.3A.).

<sup>87</sup> See *In re Air Carrier*, FAA Order No. 1996-19 at 7 (Decision and Order, June 4, 1996) (citing *Northwest Airlines, Inc.*, FAA Order No. 1990-37 at 8).

<sup>88</sup> *In re Luxemburg*, FAA Order No. 1994-18 at 6 (Order and Decision, June 22, 1994) (citing *Northwest Airlines, Inc.*, FAA Order No. 1990-37 at 12 n. 9).

<sup>89</sup> 49 U.S.C. § 46301(e). See also 14 C.F.R. § 13.16(c).

<sup>90</sup> See Hearing Transcript at 214 and Ex. C-17 at 30 (FAA Order No. 2150.3C at 9-30 (Fig. 9-9-i(2))).

<sup>91</sup> See Hearing Transcript at 214.

and frustrated.”<sup>92</sup> The undersigned judge agrees that the interference was reckless. The Respondent, a loud talker who uses his hands when impassioned, seemingly did not appreciate how distracting he was being when he attempted to express his frustration over how he felt he had been disrespected during the flight because of his status as a non-revenue passenger. The Respondent acted recklessly, though, when he let his frustration get the best of him, resulting in him raising his voice and using profanity, which then interfered with the ability of multiple crewmembers to perform their duties.

According to the FAA’s enforcement guidance, a civil penalty in the high range, from \$7,500 to \$10,500, is recommended for a reckless severity level 2 interference violation.<sup>93</sup> The starting point for discussion should be the midpoint of this range, which is \$9,000.<sup>94</sup>

As previously explained, the undersigned judge has found facts that were less severe than those alleged by the Complainant in support of its proposed civil penalty. The undersigned judge deems these less severe facts merit consideration of a less severe penalty range. Specifically, as already discussed, the preponderance of the evidence does not support a finding that the Respondent threatened any flight crewmembers. In addition to these less severe facts, the undersigned judge further finds there are other factors to consider.<sup>95</sup> For example, these very experienced flight attendants could have possibly used their de-escalation training to defuse this situation prior to having to involve the captain. Instead, they seemingly made matters worse by arguing with the Respondent, raising their own voices and chastising him for how he was acting as a non-revenue passenger, and at one point denying him access to the lavatory despite his urgent need to urinate.

Finally, the undersigned judge finds it mitigating that the Respondent was suffering from an enlarged prostate as well as kidney stones, resulting in the need to use the bathroom frequently with urgency, and experienced excruciating pain when denied the use of the lavatory. Such angst provides some explanation for his frustration and behavior, though it does not justify his distracting the flight attendants from their important safety duties. Accordingly, in light of all the circumstances in the case, the undersigned judge finds a civil penalty in the moderate range,

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<sup>92</sup> See Hearing Transcript at 214.

<sup>93</sup> See Ex. C-17 at 4-5 (FAA Order No. 2150.3C at 9-4 through 9-5 (Figs. 9-1 and 9-2)).

<sup>94</sup> See Ex. C-17 at 3 (FAA Order No. 2150.3C at 9-3, Chap. 9, ¶ 6(b)(2) (stating “[c]ounsel begins with a sanction at the midpoint of the applicable range...”).

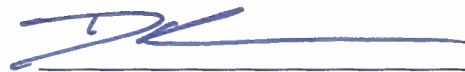
<sup>95</sup> Complainant’s counsel argued that no mitigating factors existed in this case while two aggravating factors existed, the degree of hazard and the diversion of a flight with over 100 passengers. See Hearing Transcript at 216-218.

\$4,500 to \$7,500,<sup>96</sup> to be appropriate. Given the overall circumstances, a civil penalty in the amount of \$4,500 is appropriate for the Respondent's violation of 14 C.F.R. § 121.580.

Therefore, pursuant to 14 C.F.R. § 13.205(a)(9), **IT IS HEREBY FOUND:**

1. During the subject flight, the Respondent interfered with the ability of crewmembers to perform their duties, in violation of 14 C.F.R. § 121.580.
2. The Complainant failed to prove by a preponderance of the reliable, probative, and substantial evidence that the Respondent threatened a crewmember in the performance of their duties.

**AND ORDERED:** the Respondent shall pay a civil penalty in the amount of \$4,500.<sup>97</sup>

  
DOUGLAS M. RAWALD  
Administrative Law Judge

Attachments:

1. Service List
2. Appendix 1: Complainant's Exhibits
3. Appendix 2: Respondent's Exhibits

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<sup>96</sup> See Ex. C-17 at 4-5 (FAA Order No. 2150.3C at 9-4 through 9-5 (Figs. 9-1 and 9-2)).

<sup>97</sup> Pursuant to 14 C.F.R. § 13.233(a), "A party may appeal the administrative law judge's initial decision, and any decision not previously appealed ... pursuant to §13.219, by filing a notice of appeal in accordance with § 13.210 no later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties. The party must serve a copy of the notice of appeal on each party in accordance with § 13.211." The party must then file an appeal brief within 50 days from the date of service of this order. See 14 C.F.R. § 13.233(c).

Docket No. G13-23-021  
(Civil Penalty Action)

**SERVICE LIST - BY E-MAIL**

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The Honorable Douglas M. Rawald, *Administrative Law Judge*  
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U.S. Department of Transportation  
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Email: Jacklyn.Booker@dot.gov (Attorney Advisor)



**Appendix 1: Complainant's Exhibits**

- C-1 Washington Operation Center Initial Notification, dated June 3, 2022
- C-2 [*Not Admitted*]
- C-3 American Airlines Contact Sheet for Persons Involved and Aircraft Information
- C-4 Respondent's Passenger Name Record, dated June 4, 2022
- C-5 Flight Crew Incident Report from Byron Jaffe, dated June 3, 2022
- C-6 Inflight Crew Statement from Rosa Celi, dated June 4, 2022
- C-7 [*Withdrawn*]
- C-8 [*Withdrawn*]
- C-9 Statement from Nick de la Hoz, dated June 3, 2022
- C-10 Passenger List for American Airlines Flight Number 1124 on June 3, 2022
- C-11 Letter of Investigation from Inspector Moon to John Nunez, dated August 1, 2022
- C-12 Email from John Nunez to Inspector Mood, dated August 4, 2022
- C-13 [*Withdrawn*]
- C-14 Video Recorded by Ana Maria Sanchez During American Airlines Flight Number 1124 on June 3, 2022
- C-15 Video Recorded by Ana Maria Sanchez During American Airlines Flight Number 1124 on June 3, 2022
- C-16 Picture of Passenger Details for John Nunez
- C-17 Excerpted pages from FAA Order No. 2150.3C

**Appendix 2: Respondent's Exhibits**

- R-1a Admiral Club Credit Card for John Nunez [*Sealed*]
- R-1b American Airlines AAdvantage for John Nunez
- R-1c [*Not Admitted*]
- R-2a [*Not Admitted-Duplicative*]
- R-2b [*Not Admitted*]
- R-3a Medical Records for John Nunez
- R-3b [*Not Admitted*]
- R-3c [*Not Admitted*]
- R-3d Medical Records for John Nunez
- R-4a News Article
- R-5a Video from American Airlines Flight Number 1124 on June 3, 2022
- R-6a [*Not Admitted*]
- R-6b [*Not Admitted*]
- R-7 [*Not Admitted*]
- R-8 Inflight Crew Statement from Ana Maria Sanchez, dated June 7, 2022
- R-9 Inflight Crew Statement from Maria Quiroz, dated June 4, 2022
- R-10 Record of Telephone Conversation between Inspector Mood and Rebecca Habib, dated December 5, 2022