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11 Attorneys for National Association of Immigration Judges
12 As proposed Amicus Curiae

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 AFSANEH ASHLEY)
17 TABADDOR,)
18)
19 Plaintiff,)

20 v.)

21 ERIC HOLDER, JR., in his official)
22 capacity as Attorney General of the)
23 United States; JEFFREY A.)
24 ROSENBLUM, in his official)
25 capacity as General Counsel,)
26 Executive Office for Immigration)
27 Review (EOIR); THOMAS Y.K.)
28 FONG, in his official capacity as)
Assistant Chief Immigration Judge,)
EOIR; MARLENE M.)
WAHOWIAK, in her official)
capacity as Associate General)
Counsel, EOIR; U.S.)

) Case No. 2:14-cv-6309-GW-CW
)
) **APPLICATION OF THE**
) **NATIONAL ASSOCIATION OF**
) **IMMIGRATION JUDGES TO**
) **PARTICIPATE IN THIS CASE AS**
) **AMICUS CURIAE; DECLARATION**
) **OF BRYAN KING SHELDON;**
) **PROPOSED AMICUS BRIEF**

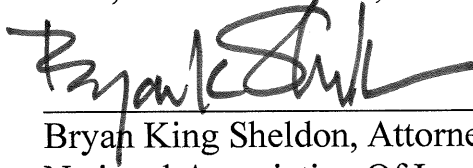
LIM, RUGER & KIM, LLP

1 The application is based upon this Application, the following Memorandum
2 of Points and Authorities, and Applicant's proposed Amicus Curiae Brief, attached
3 hereto.

4 Dated: February 23, 2015

Respectfully submitted,

5 Bryan King Sheldon
6 Sandra L. Sakamoto
7 Mark T. Hansen
8 LIM, RUGER & KIM, LLP



9 _____
10 Bryan King Sheldon, Attorneys for
11 National Association Of Immigration
12 Judges As Proposed Amicus Curiae

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MEMORANDUM OF POINTS AND AUTHORITIES

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I. THE NAIJ AND WHY IS IT INTERESTED IN THIS CASE.

Founded in 1971, The National Associate of Immigration Judges is a voluntary organization formed with the objectives of promoting independence and enhancing the professionalism, dignity, and efficiency of the Immigration Court. Nearly all of the approximately 250 U.S. Immigration Judges, including Plaintiff Immigration Judge Afsaneh Ashley Tabaddor, are members. The NAIJ is the recognized representative for collective bargaining for all U.S. Immigration Judges. NAIJ is affiliated with the International Federation of Professional and Technical Engineers (IFPTE), and NAIJ is also known as IFPTE Judicial Council 2. Because Immigration Judges are prohibited from lobbying Congress or the Department of Justice on matters pertaining to their employment, they rely on NAIJ to speak on their behalf. As a legally constituted labor organization, NAIJ is able to speak independently of the Department of Justice to advocate for its members' interests in regard to the operation of the Nation's Immigration Courts.

It has always been a priority of NAIJ to better the Immigration Courts by increasing the independence of Immigration Judges. NAIJ and its members are acutely interested in Judge Tabaddor's case because the independence of all Immigration Judges is directly at issue here, as are even more fundamental issues of freedom of speech and freedom of association. Judge Tabaddor alleges that rules of the Department of Justice have been applied against her in an arbitrary fashion, chilling her rights of free speech and association and in a way that is generally inimical to fair judging of immigration cases. All Immigration Judges share these concerns, and therefore share a strong interest in outcome of Judge Tabaddor's case.

LIM, RUGER & KIM, LLP

1 **II. THE COURT HAS DISCRETION TO ALLOW PARTICIPATION**
2 **OF NON-PARTIES AS AMICUS CURIAE.**

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4 Acceptance of amicus briefs in federal trial courts is left to the court's
5 discretion. See, e.g., *Cnty. of Marin v. Martha Co.*, 2007 WL 987310 (N.D. Cal.
6 Apr. 2, 2007) (a district court may, "in the exercise of its discretion, permit the
7 filing of an amicus curiae brief"); *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th
8 Cir.1982), abrogated on other grounds by *Sandin v. O'Connor*, 515 U.S. 472
9 (1995) (federal district courts have the inherent authority to permit a non-party to
10 participate as an amicus curiae in a case, and have broad discretion in deciding
11 whether to permit such participation); *Warehouse Restaurant, Inc. v. Customs*
12 *House Restaurant, Inc.*, 1982 U.S. Dist. LEXIS 17556, at *7 (N.D. Cal. Oct. 4,
13 1982) ("It is well-settled that a trial court may, in the exercise of its discretion,
14 permit the filing of an amicus curiae brief."); see also 25 Fed. Proc. L. Ed. §59:382
15 (discussing court's discretion to allow interested parties to participate as amicus
16 curiae in lieu of granting permissive intervention under Federal Rule of Civil
17 Procedure 24(b) and noting court has complete discretion to determine fact, extent
18 and manner of amicus participation).

19 While "[t]here are no strict prerequisites that must be established prior to
20 qualifying for amicus status," *In re Roxford Foods Litig.*, 790 F.Supp. 987, 997
21 (E.D.Cal.1991), the district courts in the Ninth Circuit have defined certain
22 qualifying characteristics. An amicus applicant must demonstrate that its
23 "participation is useful to or otherwise desirable to the court." *In re Roxford*, 790 F.
24 Supp. at 997 (internal citation omitted). For example, in *NGV Gaming, Ltd. v.*
25 *Upstream Point Molate, LLC*, 355 F.Supp.2d 1061, 1067 (N.D. Cal. 2005),
26 participation was allowed where the amicus presented "legal issues that have
27 potential ramifications beyond the parties directly involved."
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III. NAIJ SHOULD BE ALLOWED TO PARTICIPATE.

NAIJ members are directly impacted by issues before this Court in Judge Tabaddor’s suit. They are subject to the same restrictions on extra-judicial conduct, but more importantly are impacted by the application of the restrictive rules and laws. The proposed brief does not initiate, create, extend or enlarge the issues in the case, nor does it argue facts. It merely addresses the legal issues already present in the case, as they may apply more broadly to NAIJ members. Just as in *NGV Gaming, supra*, the proposed brief presents “legal issues that have potential ramifications beyond the parties directly involved.” *NGV Gaming, supra*, 355 F.Supp.2d at 1067. Plaintiff Tabaddor consents to NAIJ participating in the case and the Defendants take no position on whether amicus briefing should be allowed. See, Sheldon decl., para 2.

In light of the broad implications of the pending case, and in the absence of opposition of the parties, it is respectfully requested that the Court allow NAIJ to participate in the matter and that it consider NAIJ’s arguments in connection with its consideration of Defendants’ motion to dismiss this case.

Dated: February 23, 2015

Respectfully submitted,

Bryan King Sheldon
Sandra L. Sakamoto
Mark T. Hansen
LIM, RUGER & KIM, LLP



Bryan King Sheldon, Attorneys for
National Association Of Immigration
Judges As Proposed Amicus Curiae

DECLARATION

DECLARATION OF BRYAN KING SHELDON

I, Bryan King Sheldon, declare:

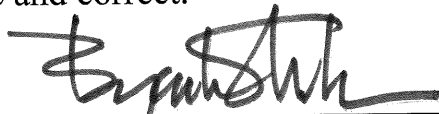
1. I am an attorney admitted to practice before this court. I am a member of Lim, Ruger and Kim, LLP, attorneys for amicus curiae applicant The National Association of Immigration Judges. I have personal knowledge of the facts set forth in this declaration.

2. On February 5, 2015 I participated in a conference call with, among others, Benjamin Berwick, counsel for Defendants, Allison Rego, counsel for Plaintiff, and Carl Grumer, counsel for prospective amici Asian Americans Advancing Justice and other potential amicus parties. Among the subjects discussed was whether the Plaintiff and Defendants would consent to the participation of the proposed amici in the briefing related to the Defendants' motion to dismiss the action. Counsel for Plaintiff expressed no objection to participation by amici and counsel for Defendants said his clients would take no position on the matter. We also discussed revision of the briefing schedule to accommodate amicus applications, and the parties subsequently stipulated to a revised briefing schedule which has been accepted and ordered by the Court. (Document 33.)

3. The proposed amicus curiae brief of The National Association of Immigration Judges is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 23, 2015



Bryan King Sheldon

LIM, RUGER & KIM, LLP