

1 COOLEY LLP
2 ALI M. M. MOJDEHI (123846)
3 (AMOJDEHI@COOLEY.COM)
4 ALLISON M. REGO (272840)
5 (AREGO@COOLEY.COM)
6 4401 Eastgate Mall
7 San Diego, CA 92121
8 Telephone: (858) 550-6000
9 Facsimile: (858) 550-6420

6 Attorneys for Plaintiff
7 Immigration Judge A. Ashley Tabaddor

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

11 AFSANEH ASHLEY TABADDOR,
12 Plaintiff,

13 v.

14 ERIC H. HOLDER, JR., Attorney
15 General of the United States, United
16 States Department of Justice;
17 JEFFREY A. ROSENBLUM, General
18 Counsel, Executive Office for
19 Immigration Review; THOMAS Y.K.
20 FONG, Assistant Chief Immigration
21 Judge, Executive Office for
22 Immigration Review; MARLENE M.
23 WAHOWIAK, Associate General
24 Counsel, Office of the General
25 Counsel, Executive Office for
26 Immigration Review; UNITED
27 STATES DEPARTMENT OF
28 JUSTICE; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW, UNITED
STATES DEPARTMENT OF
JUSTICE; OFFICE OF THE
GENERAL COUNSEL, EXECUTIVE
OFFICE FOR IMMIGRATION
REVIEW; OFFICE OF THE CHIEF
IMMIGRATION JUDGE,
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW,

Defendants.

Case No. 14-cv-06309

COMPLAINT

DEMAND FOR JURY TRIAL

///
///

1 Afsaneh Ashley Tabaddor (“Plaintiff” or “Judge Tabaddor”), for her
2 Complaint alleges as follows:

3 **I. INTRODUCTION**

4 1. Judge Tabaddor is a sitting Immigration Judge with the United States
5 Department of Justice (“DOJ” or “Justice Department”), Executive Office for
6 Immigration Review (“EOIR”, collectively, the above-named Defendants are
7 referred to as the “Agency”). Judge Tabaddor is also a highly respected member of
8 the Iranian-American community. In 2012, the Agency ordered that Judge
9 Tabaddor be recused from any case involving Iranian nationals—an order that
10 remains in effect today. As detailed below, Judge Tabaddor challenges the
11 propriety and unconstitutionality of such a blanket recusal order, of indefinite
12 duration, where the Agency’s stated basis is Judge Tabaddor’s exercise of her First
13 Amendment rights—*outside* the workplace, on her *own time*, and in her *personal*
14 capacity—associated with the country she was born in and relating to the Iranian-
15 American community.

16 2. It is axiomatic that a judge does not check her First Amendment rights at the
17 courthouse door, to be reclaimed at the expiration of her judicial tenure. Quite the
18 opposite, Judges routinely speak, write, lecture, teach, and participate in other
19 activities concerning the law, the legal system, the administration of justice and a
20 range of other matters of public concern. Immigration Judges are no exception.
21 Indeed, Immigration Judges (as well other Justice Department employees) in
22 general, are affirmatively *encouraged* to be role models and leaders in the
23 community by speaking, writing, lecturing, teaching and participating in outside
24 volunteer and professional activities, including pro bono and bar activities. Judge
25 Tabaddor has embraced the Justice Department’s policy in her nearly nine years of
26 service as an Immigration Judge and actively engages in a variety of community,
27 educational, bar and pro bono activities outside of the workplace, all with the
28 approval of Justice Department officials.

1 3. In the summer of 2012, Judge Tabaddor was invited to attend an event held
2 by the White House Office of Public Engagement entitled a “Roundtable with
3 Iranian-American Community Leaders.” Judge Tabaddor sought approval for use of
4 one day of annual leave to attend the event, and although she was ultimately
5 approved to attend the event, the Agency recommended that Judge Tabaddor be
6 recused from all cases, and cease to be assigned any cases, involving Iranian
7 nationals, stating that Judge Tabaddor’s association with the Iranian-American
8 community and invitation to the attend the Roundtable event created an appearance
9 of impropriety. After Judge Tabaddor protested the recommendation, among other
10 things, the recommendation was elevated to an order.

11 4. This Complaint seeks to remedy the lawless and discriminatory action on the
12 part of the Justice Department, taken against Plaintiff, who has been adversely
13 treated, simply because of her national origin and her exercise of her First
14 Amendment rights to participate in outside volunteer and professional activities in
15 connection with the Iranian-American community. The Roundtable event, as well
16 as other community activities Judge Tabaddor participates in, fall squarely within
17 the ambit of protected speech and are precisely the kind of activity that the Justice
18 Department policy condones and encourages. Moreover, righting this particular
19 wrong will have important ramifications beyond Plaintiff’s case. Unless the Agency
20 is prevented from having unbridled power to issue recusal orders against
21 Immigration Judges, based on their race, national origin, religion or perceived
22 interests, the effect is that Immigration Judges will be improperly manipulated and
23 intimidated by Justice Department officials, and their decisional independence will
24 be severely threatened.

25 5. Plaintiff has been wronged by a discriminatory and unconstitutionally
26 overbroad Agency blanket recusal order requiring Judge Tabaddor to be recused
27 indefinitely from all immigration cases involving Iranian nationals. The Agency
28 issued the blanket recusal order based upon Judge Tabaddor’s independent

1 speaking and community service and leadership activities associated with the
2 Iranian-American community, conducted entirely on her own time and outside the
3 workplace. The Agency’s order is discriminatory on its face, in that it targets Judge
4 Tabaddor for adverse treatment merely because she was identified by the Agency as
5 a prominent and highly respected member of the Iranian-American community.
6 Indeed, the Department’s own Deputy Designated Agency Ethics Official (at the
7 time relevant to the Complaint) described the blanket recusal order as
8 “discriminatory.”

9 6. The Agency’s adoption of a policy of requiring blanket recusals based upon
10 the speech and associational activities of Immigration Judges outside of the
11 workplace has a chilling effect, depriving not only Judge Tabaddor, but all
12 Immigration Judges of their First Amendment rights of free expression and
13 assembly, completely apart from their duties as Immigration Judges and outside the
14 workplace. Indeed, Defendant Rosenblum, EOIR’s current General Counsel and
15 one of the primary responsible officials for the Agency’s unlawful action, expressly
16 stated as much when he proclaimed that there may be “consequences” for Judge
17 Tabaddor’s exercise of protected speech and freedom of association.

18 7. Plaintiff alleges that the Agency has in the past and continues to unlawfully:
19 (i) violate Plaintiff’s First Amendment rights of free speech and association; (ii)
20 discriminate against her on account of race, national origin, and/or religion and
21 association with groups whose members are identified with these characteristics;
22 (iii) retaliate against her for having engaged in protected conduct.

23 8. The heinous motivation behind the blanket recusal order is established by,
24 among other things, the paucity of meaningful good faith deliberations by the
25 Agency and their failure to follow even the most elemental procedural requirements
26 for their analysis and purported investigation. The Agency decisionmakers based
27 the order on various false assumptions, for which they knew or should have known
28 that there was no basis in fact. The Agency issued the recusal order without any due

1 deliberation. The Agency even failed to consult the Deputy Designated Agency
2 Ethics Official at the time, who has stated on the record that the recusal order was
3 “inappropriate” and “discriminatory.” Even more shocking, the Agency’s order
4 was issued in substantial reliance upon the quantity of results returned from the
5 Agency’s internet search of Plaintiff’s *misspelled* name and the word, “Iran.” Not
6 only is such an inquiry grossly deficient, and devoid of a rational basis, but it is also
7 impermissible, being rooted in an invidious race-based classification. The Agency’s
8 approach is also the epitome of a results-oriented approach, particularly where even
9 this most minimal inquiry was undertaken only *after* the Agency had already
10 recommended (though not ordered) Judge Tabaddor’s recusal and Judge Tabaddor
11 had expressed her opposition to the recommendation. The Agency’s fundamentally
12 flawed investigation evidences the Agency’s discriminatory intent.

13 9. The blanket recusal order was also in disregard of existing law. In issuing
14 the recusal order, the Agency expressly relied upon 5 C.F.R. § 2635.502(a). Here,
15 as detailed below, there was no basis whatsoever for recusing Judge Tabaddor
16 under the cited regulation which is applicable only to disqualification from a
17 “particular matter involving specific parties.” There is no colorable excuse for the
18 Agency’s improbable construction of 5 C.F.R. § 2636.502(a), where, among other
19 things, the United States Office of Government Ethics (“OGE”) has issued a Legal
20 Advisory, which the Agency was or should have been aware of, in which the OGE
21 stated that such terms in the regulation “are terms of art with established
22 meanings.” The only explanation is a heinous and discriminatory motivation.

23 10. As further proof of an improper purpose, the Agency’s order is also contrary
24 to its own regulations and policies relating to recusals, including the requirement
25 the recusal determinations be made on a case-by-case basis, and to engagement in
26 outside civic and volunteer activities by DOJ employees, which as noted above, is
27 affirmatively encouraged by the DOJ. Judge Tabaddor has scrupulously adhered to
28 Agency policies with respect to her speaking, educational and community activities

1 outside of the workplace. Nonetheless, the Agency continues to subject Judge
2 Tabaddor to adverse treatment, and her reputation has been unjustly impugned and
3 her integrity besmirched, based upon those very outside activities, just because the
4 subject matter of the activities and content of the relevant speech is associated with
5 matters of importance to the Iranian-American community.

6 11. As a consequence both the Agency's recusal order and policy in applying
7 the provisions of 5 § C.F.R. 2635.502(a) are unlawful, on two alternative grounds.
8 First, the Agency's action is facially discriminatory and sets Judge Tabaddor apart
9 for adverse and unequal treatment, simply because of her race, national origin
10 and/or religion. Second, the blanket recusal is an unconstitutional violation of Judge
11 Tabaddor's First Amendment rights, in that it impermissibly chills her rights of free
12 expression and association with Iranian-American groups, apart from her
13 employment by the Federal Government. The Agency's blanket recusal order
14 should be stricken down by this Court as unconstitutional and therefore declared to
15 be void. Additionally, the Agency's policy in applying 5 § C.F.R. 2635.502(a) is
16 unconstitutional and its further enforcement in such a manner should be enjoined.

17 **II. JURISDICTION AND VENUE**

18 12. This Court has jurisdiction over the subject matter of this action pursuant to
19 28 U.S.C. § 1331 in that this case arises under federal and constitutional law,
20 specifically, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*
21 (referred to herein as "Title VII") and the First Amendment to the U.S.
22 Constitution.

23 13. The Court has the authority to grant declaratory and injunctive relief
24 pursuant to the Declaratory Judge Act, 28 U.S.C. §§ 2201 and 2202.

25 14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) because this
26 action is brought against officers or employees of agencies or departments of the
27 United States, in their official capacities, and departments and agencies of the
28 United States, and because this is the judicial district where Judge Tabaddor resides

1 and where a substantial part of the events or omissions giving rise to the claim
2 occurred.

3 **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 15. Plaintiff has satisfied all of the procedural and administrative requirements
5 set forth in Title VII, in particular:

- 6 a. On November 29, 2012, Plaintiff filed a complaint of discrimination with
7 the DOJ.
8 b. On or about May 20, 2014, Plaintiff received the DOJ's final agency
9 decision.
10 c. This Complaint is being filed within ninety (90) days of Plaintiff's receipt
11 of the final agency decision.

12 16. Plaintiff's claims under the First Amendment, which are solely for equitable
13 relief and concern Plaintiff's free speech and associational activities apart from her
14 employment by the Federal Government, do not require administrative exhaustion.

15 **IV. PARTIES**

16 **A. Judge Tabaddor**

17 17. Judge Tabaddor was appointed as an Immigration Judge in 2005. At all
18 times relevant to the Complaint, Judge Tabaddor sat on the Immigration Court in
19 Los Angeles, California. Judge Tabaddor is qualified for her position. Judge
20 Tabaddor has at all times performed her duties as an Immigration Judge free from
21 bias and in a judicially impartial manner. Prior to being appointed as an
22 Immigration Judge, Plaintiff served as an assistant United States attorney for the
23 Central District of California.

24 18. Judge Tabaddor is Iranian-American. Her race is Near East Asian, Middle
25 Eastern and Persian. Judge Tabaddor is culturally Muslim.

26
27
28

1 **B. Department of Justice**

2 19. Defendant Eric H. Holder is the Attorney General of the DOJ and is sued in
3 his official capacity. The DOJ is an executive department of the government of the
4 United States.

5 20. The EOIR was at all times relevant to the Complaint, an agency of the DOJ,
6 organized and existing under the laws of the United States. The Office of the Chief
7 Immigration Judge is an office within the EOIR that provides overall program
8 direction, articulates policies and procedures, and establishes priorities for
9 Immigration Judges. The Office of the General Counsel (“OGC”) is an office
10 within the EOIR that provides legal advice on matters involving the EOIR and its
11 employees in the performance of their official duties.

12 21. Jeffrey A. Rosenblum (“Rosenblum”) was at all times relevant to the
13 Complaint until December 2012, Chief Counsel of the Employee/Labor Relations
14 Unit in the OGC and is sued in his official capacity. The Employee/Labor Relations
15 Unit of OGC advises EOIR managers on personnel issues, defends Equal
16 Employment Opportunity (“EEO”) actions filed against the EOIR, monitors
17 investigations conducted by the Office of Professional Responsibility in the DOJ,
18 and defends against unfair labor practices charges. In December 2012, Rosenblum
19 became General Counsel for the EOIR.

20 22. Marlene M. Wahowiak (“Wahowiak”) was an Associate General Counsel at
21 the DOJ’s Office of Professional Responsibility. From approximately March 2012
22 to December 2012, Wahowiak was on detail to the Employee/Labor Relations Unit
23 in the OGC. In December 2012, Wahowiak became permanent at the
24 Employee/Labor Relations Unit in the OGC. Wahowiak is sued in her official
25 capacity

26 23. Thomas Y.K. Fong (“ACIJ Fong”) was, at all times relevant to the
27 Complaint, an Assistant Chief Immigration Judge at the Immigration Court in Los
28 Angeles, California and is sued in his official capacity.

1 24. At all times relevant to the Complaint, ACIJ Fong was Judge Tabaddor’s
2 direct supervisor.

3 **V. STATEMENT OF FACTS**

4 **A. DOJ Policies Relating to Outside Activities**

5 25. The DOJ has a stated policy that “Department employees are encouraged to
6 participate in outside volunteer and professional activities, including pro bono and
7 bar activities. . . .” In her nearly nine years on the bench, Judge Tabaddor has
8 embraced the public service and community engagement ideals embodied by this
9 policy.

10 26. As such, Judge Tabaddor regularly participates in a range of activities
11 outside of the workplace in her personal capacity, including invitations to speak or
12 otherwise participate in events organized by, among others, the Coalition of Iranian
13 Entrepreneurs, Los Angeles County Bar Association, Iranian American Bar
14 Association, Public Affairs Alliance of Iranian Americans, Iranian American
15 Women’s Leadership Conference, Orange County Bar Association, Kids in Need of
16 Defense, the Pacific Council on International Policy, and academic institutions
17 including her *alma matter* the University of California at Los Angeles (“UCLA”),
18 and the University of California, Hastings School of Law.

19 27. With respect to all such outside activities, each of which has been taken in
20 her personal capacity, Judge Tabaddor has obtained the approval of her supervisor,
21 ACIJ Fong, as well as ethics approval from of the OGC. Such approvals were
22 obtained by Judge Tabaddor even though, because they were undertaken in her
23 personal capacity, they were not strictly required by DOJ policy.

24 28. From her appointment to the bench in and around November 2005 up to
25 November 2012, Judge Tabaddor submitted approximately 53 speaking
26 engagement or teaching requests, substantially all of which were approved. Of
27 those, approximately 17 requests, or about 32%, had any connection to the Iranian
28 American community, including solely with respect to the name of the organization

1 Judge Tabaddor was requesting to speak before irrespective of the topic of the
2 speaking engagement.

3 **B. Judge Tabaddor Requests Leave to Attend Roundtable Event**

4 29. On June 27, 2012, Judge Tabaddor was invited by the White House Office
5 of Public Engagement to attend an event entitled “Roundtable with Iranian-
6 American Community Leaders.” Judge Tabaddor planned to attend the meeting on
7 her own time, purely in her personal capacity, and without any use of her official
8 Justice Department title. Although not generally required, when Judge Tabaddor
9 requested permission from ACIJ Fong for annual leave, she explained that she was
10 seeking personal annual leave to attend the Roundtable. ACIJ Fong initially
11 indicated he was not inclined to approve the request, and did not believe Judge
12 Tabaddor should attend the event. When Judge Tabaddor indicated that she did not
13 agree with that assessment, and reminded ACIJ Fong that she was simply
14 requesting annual leave which is routinely granted without any need for
15 explanation, ACIJ Fong stated that he was amenable to Judge Tabaddor putting the
16 request in writing, to ACIJ Fong’s attention, to be forwarded up, presumably to the
17 Office of the Chief Immigration Judge. Judge Tabaddor initiated such a written
18 request. Without responding to Judge Tabaddor’s written request, ACIJ Fong
19 forwarded her request to the OGC.

20 30. Judge Tabaddor was then contacted by Rosenblum, on behalf of the OGC,
21 who asked that they speak so he could pose some clarifying questions. During the
22 phone call, Rosenblum told Judge Tabaddor that she could attend the Roundtable
23 meeting as long as she was not appearing in her official capacity or representing
24 anyone before a federal agency or official (*i.e.*, as such is delineated in 5 § C.F.R.
25 2635.801). Rosenblum did not make any mention of recusal or any “consequences”
26 of attending the Roundtable meeting. Judge Tabaddor was attending purely in her
27 personal capacity, outside of the workplace, and not “representing” any
28

1 organization or individual at the Roundtable meeting, as such term is used in 5
2 C.F.R. § 2635.801.

3 31. On July 5, 2012, Judge Tabaddor received an email from Rosenblum on
4 behalf of the OGC in connection with her request to attend the Roundtable meeting.
5 As stated above, during this time, Rosenblum was not an Agency ethics officer, but
6 rather was the Chief Counsel of the Employee/Labor Relations Unit. However, on
7 information and belief, Rosenblum did act as a duty attorney for ethics issues
8 during the time relevant to this Complaint. Rosenblum responded on behalf of the
9 OGC and granted Judge Tabaddor approval to attend the Roundtable meeting in her
10 personal capacity. However, in the closing paragraph of his July 5, 2012 email,
11 Rosenblum *sua sponte* “recommended” that Judge Tabaddor recuse herself from
12 “any matter involving individuals from Iran that comes before [her] in [her]
13 capacity as an Immigration Judge.” Rosenblum stated this recommendation was
14 made based on Judge Tabaddor’s activities in the Iranian American community,
15 and her request to participate in the Roundtable meeting. Without making any
16 finding that any of Judge Tabaddor’s prior activities had resulted in any appearance
17 of impropriety, or that her attendance at the Roundtable meeting would result in
18 such appearance of impropriety, Rosenblum stated: “Pursuant to 5 C.F.R. §
19 2635.502(a), an employee should not participate in a matter in which
20 ‘circumstances would cause a reasonable person with knowledge of the relevant
21 facts to question [her] impartiality in the matter.’”

22 32. On August 20, 2012, after she attended the Roundtable, Judge Tabaddor
23 sought clarification of Rosenblum’s recommendation that she recuse herself from
24 cases involving individuals from Iran. She specifically asked that Rosenblum
25 identify why her activities in the Iranian American community would create an
26 appearance of bias or impropriety, including whether it was because she is Iranian
27 American. Judge Tabaddor stated that she is aware of other Immigration Judges
28 who have been active in their ethnic and religious communities, but who had not

1 been subject to blanket recusal recommendations like the one being imposed on her.
2 For this reason, she questioned Rosenblum as to whether she was being held to the
3 same standard as other Immigration Judges who are of a certain racial or ethnic
4 group or religion and participate in community activities involving that group or
5 religion. In so doing, Judge Tabaddor protested the Agency's discriminatory acts
6 on account of her national origin, race and religion. She specifically stated, "Is it
7 because I am an Iranian-American?" She also specifically requested that OGC
8 provide a "fully analyzed opinion on the issue along with specific instructions" *or*
9 that "the ethics office reconsider [Rosenblum's] 'recommendation' and clarify the
10 record on the matter."

11 **C. Judge Tabaddor is Ordered to Recuse Herself from All Cases**
12 **Involving Individuals from Iran**

13 33. On August 28, 2012, Mr. Rosenblum responded to Judge Tabaddor's August
14 20, 2012 email by, among other things, escalating the OGC opinion from a
15 recommendation to an order. The email stated that Judge Tabaddor "*should*
16 disqualify [herself] from cases involving respondents from Iran to avoid any
17 appearance problems." In so deciding, Rosenblum did not cite any specific reasons
18 why Judge Tabaddor's activities in the Iranian American community would create
19 an appearance of bias. Rather, Rosenblum made blanket, unsubstantiated
20 conclusions regarding Judge Tabaddor, stating:

21 You are a prominent advocate for the Iranian-American community,
22 and your activities are well-documented in the public domain,
23 including but not limited to the internet. You engage in advocacy at
24 such a high level that you were invited by the White House Office of
Public Engagement to speak on behalf of the Iranian-American
community, and your speeches, presentations, and advocacy are
widely available.

25 34. Rosenblum failed to cite a single example of any activities he, or anyone
26 else, timely considered as a basis for his decision, let alone explain how Judge
27 Tabaddor's involvement in them would create an appearance of impropriety. *In*
28 *fact, he conceded that "in no way is OGC suggesting that you have an actual bias."*

1 35. In his August 28, 2012 email Rosenblum further stated that while Judge
2 Tabaddor could choose the outside activities she wished to participate in, “those
3 choices may have *consequences*, such as [her] ability to participate in particular
4 matters officially.” (emphasis added). For this proposition, Rosenblum cited 5
5 C.F.R. § 2635.502(b)(1)(v), which requires employees to disqualify themselves
6 from particular matters where organizations in which they are active participants
7 come before them.

8 36. Rosenblum did not state that he had applied a uniform standard in deciding
9 to recommend recusal in Judge Tabaddor’s case. In his August 28, 2012 email he
10 claimed that OGC had recommended that Immigration Judges disqualify
11 themselves “from a particular class of matters in similar circumstances,” but he did
12 not identify those other matters. Further, Rosenblum did not state that OGC had
13 ever required an Immigration Judge to recuse himself or herself from an entire class
14 of respondents, *in perpetuity*, without any actual finding of an appearance of
15 impropriety based on facts. Rosenblum additionally did not state that he had
16 actually considered such matters at the time he made the recusal recommendation
17 or the recusal order. He also did not identify what authority the Agency was
18 relying on to impose mandatory recusals in any of those cases.

19 37. In an email dated September 5, 2012, Judge Tabaddor requested further
20 clarification of Rosenblum’s recusal order, including whether it was the official
21 position of the EOIR. She also reiterated her request that the order be reviewed.

22 38. On September 7, 2012, Rosenblum confirmed that his recusal order was the
23 official position of OGC, stating that he “consulted with the Departmental Ethics
24 Office (DEO) concerning the issue. DEO confirmed the OGC’s opinion.”
25 Rosenblum did not, however, provide any formal, written opinion from DEO, and
26 Rosenblum foreclosed any further review of the order stating that “it was not
27 ‘reviewable’ by another entity.”
28

1 39. In an email dated September 10, 2012, Judge Tabaddor again protested the
2 recusal order by stating that she “disagree[s] with the characterization of the facts
3 and the conclusions of the EOIR OGC.” She also pointed out that the order was not
4 consistent with EOIR rules, which do not contemplate recusals under the current
5 circumstances where, among other things, it is not initiated by the parties to a case
6 or the Immigration Judge.

7 40. However, that same day, ACIJ Fong instructed Judge Tabaddor that he
8 would follow Rosenblum’s order, and he thereby instructed her to recuse herself
9 from all cases involving individuals from Iran. Based on this instruction, Judge
10 Tabaddor issued recusal orders in the eight cases on her docket (two of which were
11 consolidated cases) involving ten respondents from Iran, the majority of which had
12 progressed well beyond the initial stages.

13 41. Judge Tabaddor remains subject to the recusal order, which is of infinite
14 duration, and therefore precludes her from being assigned any cases involving
15 Iranian nationals. Judge Tabaddor, thus, continues to be singled out in her treatment
16 vis-à-vis other Immigration Judges who are randomly assigned cases.

17 42. Because of the discriminatory treatment, Judge Tabaddor is segregated from
18 her similarly situated colleagues both in her job authority and in being subject to
19 different case assignment and recusal standards. Such has materially affected the
20 terms, conditions and privileges of Judge Tabaddor’s employment and caused
21 Judge Tabaddor anguish and humiliation.

22 43. Further, the Agency’s policy of applying regulations relating to Immigration
23 Judge recusals in an overly broad manner operates to substantially chill the free
24 speech and associational rights outside of the workplace, not only of Judge
25 Tabaddor, but of Immigration Judges in general.

26
27
28

1 **D. No Reasoned Process was Undertaken in Issuing the Recusal**
2 **Order**

3 44. On information and belief, there is a near complete absence of any
4 contemporaneous records relevant to the actions taken against Judge Tabaddor with
5 respect to the recusal recommendation and recusal order at the time they were
6 issued. On information and belief, the Agency did not engage in any substantive
7 deliberative process in issuing the recusal recommendation or recusal order. On
8 information and belief, the Agency did not engage in any analysis of the recusal
9 recommendation and order imposed upon Judge Tabaddor vis-à-vis any other
10 recusal recommendations or orders issued to Immigration Judges, or for that matter
11 other DOJ employees, until, if at all, after the recusal recommendation and order.

12 45. The Agency did not engage in any meaningful factual investigation, legal or
13 policy analysis, use of a uniform process, or consultation with key ethics personnel.
14 In particular, in issuing the recusal recommendation and order, Rosenblum and
15 ACIJ Fong failed to consult with JuanCarlos M. Hunt (“Hunt”), who at all times
16 relevant to the Complaint was the Deputy Designated Agency Ethics Official
17 (“DDAEO”). Rosenblum’s failure to consult with the DDAEO is particularly
18 egregious where Rosenblum’s position as Chief Counsel of the Employee Labor
19 Relations Unit placed him in a position of conflict of interest, a conflict even
20 recognized by the Agency during the EEO administrative process that preceded this
21 Complaint.

22 46. Hunt has stated that “it was inappropriate to require Judge Tabaddor to
23 recuse herself from all cases involving Iranians” and has further stated that “the
24 [recusal] order was discriminatory.” Moreover, Hunt has stated the he is “not
25 aware of any immigration judge (IJ) or other EOIR staff member being required to
26 recuse themselves from cases involving members of their prospective national
27 origin.”
28

1 47. Rosenblum has stated that in issuing the recusal order, he consulted with
2 approximately four others, particularly Wahowiak, as well as OCG attorney Rena
3 Scheinkman (“Scheinkman”) and Kathleen Silbaugh (“Silbaugh”) of the DOJ’s
4 Departmental Ethics Office. In so consulting, Rosenblum disseminated materially
5 misleading information as to the nature of the Roundtable event, misrepresenting
6 that Judge Tabaddor was invited to speak at the White House.

7 48. Wahowiak, who at all times relevant to the Complaint was supervised by
8 Rosenblum, advised Scheinkman of the propriety of the recusal order on August 22,
9 2012. Her advice was based on the number of results generated by a google search
10 for “Ashley Tabaddor” and “Iran” and a single line in Judge Tabaddor’s UCLA
11 faculty profile which stated she is a leader in the Iranian American community.
12 Wahowiak concluded from this inquiry that Judge Tabaddor has a “prominent role
13 in the Iranian-American community at large” and is an “advocate/activist for a
14 group which may have a direct interest in a matter before the immigration court.”
15 Among other things, given that Judge Tabaddor was born in Iran, any general
16 recitation of her background could include the word “Iran” without any connection
17 whatsoever to “activism.”

18 49. Thus, based on the results of a google search, for which no records were
19 maintained, and for which care was not even taken to spell Judge Tabaddor’s name
20 correctly, Rosenblum issued the recusal order. Even this did not occur until *after*
21 Rosenblum had already recommended Judge Tabaddor’s recusal.

22 50. On information and belief, at the time Judge Tabaddor was recommended
23 and then ordered recused, no Immigration Judge had been subject to a blanket
24 recusal order based on their activity in or association with groups reflecting their
25 national origin, religion or race. On information and belief, at the time Judge
26 Tabaddor was recommended and then ordered recused, no Immigration Judge had
27 been subject to a blanket recusal order from any class of cases in perpetuity. On
28 information and belief, there are Immigration Judges who have been active in their

1 ethnic and/or religious communities but who have not been subject to blanket
2 recusal orders from cases involving respondents that are identified with those same
3 communities.

4 51. ACIJ Fong formally implemented the recusal order issued by Rosenblum.
5 On information and belief, ACIJ Fong did not undertake any independent review of
6 recusal order. ACIJ Fong has stated that recusal decisions are made on an
7 individualized case-by-case basis at the instigation of a litigant involved (by way of
8 motion) or an Immigration Judge himself/herself. Judge Tabaddor was, and
9 continues to be, prevented from exercising her right and privilege as an
10 Immigration Judge to use her independent judgment to objectively determine
11 whether to recuse herself from cases as required by Agency rules and regulations,
12 and is being held to different recusal and disqualification standards and procedures
13 than other Agency employees, including other Immigration Judges.

14 **E. On its Face, the Recusal Order Was Issued on Account of Judge**
15 **Tabaddor's National Origin, Race and/or Religion**

16 52. Judge Tabaddor's nationality, race, and/or religion and association with the
17 same, were the sole and/or motivating reasons for the recusal order.

18 53. Hunt, the DDAEO at the relevant time, has attested that the recusal order is
19 discriminatory.

20 54. Silbaugh, has stated that Rosenblum presented the recusal issue as
21 "including that the Immigration Judge (IJ) Tabaddor *is Iranian*, and she was going
22 *to speak at a White House event about issues specific to the Iranian community.*"

23 55. Wahowiak's advice that the recusal order be issued was based on the
24 connection between Judge Tabaddor's name and the word "Iran."

25 56. On its face, the recusal order was motivated by Judge Tabaddor's nationality
26 and association with Iranian-Americans.

1 **F. There is No Legitimate, Non-Discriminatory Basis for the Recusal**
2 **Order**

3 57. There is no valid non-discriminatory reason for the recusal order. In issuing
4 the recusal recommendation, and then order, Rosenblum stated that Judge
5 Tabaddor's activities in the Iranian-American community require recusal under
6 C.F.R. §2635.502. This has no basis in fact or law and is pretext for discrimination
7 on account of Judge Tabaddor's race, national origin and/or religion as well as her
8 association with groups identified with the same. More specifically, 5 C.F.R. §
9 2635.502(a) provides as follows (emphasis added):

10 Where an employee knows that *a particular matter involving specific*
11 *parties* is likely to have a direct and predictable effect on the financial
12 interest of a member of his household, *or knows that a person with*
13 *whom he has a covered relationship is or represents a party* to such
14 matter, and where the employee determines that the circumstances
15 would cause a reasonable person with knowledge of the relevant facts
16 to question his impartiality in the matter, the employee should not
17 participate in the matter unless he has informed the agency designee of
18 the appearance problem and received authorization from the agency
19 designee in accordance with paragraph (d) of this section.

20 58. In turn, a "covered relationship" is defined by the regulations as including,
21 "persons with whom the employee or a member of the employee's household has a
22 close personal, contractual or financial relationship, or "an organization, other than
23 a political party described in 26 U.S.C. § 527(e), in which the employee is an active
24 participant." As referenced above, the OGE has issued a Legal Advisory, dated
25 October 4, 2006, emphasizing that the phrase "particular matter involving specific
26 parties" is to be narrowly construed, that the reference to specific parties forecloses
27 application of the regulation in the context of "broader types of particular matters,"
28 and that application requires analysis on a case-by-case basis.

29 59. There is no evidence, or even an allegation, that Judge Tabaddor's
30 involvement in cases involving Iranian nationals in any way implicates a financial
31 interest in the outcome of those cases. There is no evidence or claim by the Agency
32 that any of the organizations with which Judge Tabaddor has been involved
33 represents Iranian refugees or nationals, or that these organizations would be parties

1 before her in her capacity as an Immigration Judge. There is no evidence that
2 Judge Tabaddor’s speech and associational activities, in her personal capacity,
3 pertain to any advocacy for Iranian nationals seeking asylum or other immigration
4 benefits in the United States.

5 60. Moreover, 5 C.F.R. § 2635.502 expressly states that it shall not “be
6 construed to suggest that an employee should not participate in a matter because of
7 his political, religious or moral views.”

8 61. Likewise, there is substantial significance to the fact that the order was a
9 “blanket” recusal order—applying indefinitely to any matter involving Iranian
10 nationals. Among other things, the recusal order is violative of DOJ policy (as set
11 forth in the Operating Policies and Procedures Memorandum 05-02: Procedures for
12 Issuing Recusal Orders in Immigration Proceedings) which directs that “[b]lanket,
13 or broad disqualifications of a judge should be carefully considered, since the
14 compelling evidence standard dictates that *judges* examine and analyze each case
15 *individually* to make a determination that disqualification is required.” Further, DOJ
16 policy directs that “broad recusals should only be considered in those circumstances
17 in which the statute [28 U.S.C. § 455(b)] mandates automatic disqualification.”
18 There is no evidence, or even an allegation, that Judge Tabaddor would be subject
19 to mandatory recusal under 28 U.S.C. § 455(b), which requires a specific finding of
20 “actual” bias . Rather, the Agency has admitted there is no allegation, much less a
21 finding on its part, of actual bias.

22 62. The Agency’s failure to consider and meet the standards set forth in these
23 authorities, as well as other applicable law and policies, is further evidence that the
24 stated reason for their recusal order is pretextual, and that Judge Tabaddor has been
25 intentionally singled out for unfavorable treatment on account of her race, national
26 origin and/or religion in violation of Title VII.

27 63. The explanation proffered by the Agency as to the basis for the recusal
28 recommendation and order is implausible, uninformed and inconsistent with DOJ

1 practice and policy and applicable law and regulations. Furthermore, the absence
2 of any meaningful investigation and analysis prior to issuing the recusal
3 recommendation and order renders the conclusion reached by Rosenblum
4 inherently flawed and as such, unworthy of credence. In addition, the Agency has
5 been inconsistent in the manner which they have sought to characterize Judge
6 Tabaddor's outside activities.

7 64. After Judge Tabaddor protested the recusal order, on November 29, 2012,
8 Rosenblum sought to impose another blanket recusal recommendation, this time
9 directed to an Armenia-American Immigration Judge, to be recused from any
10 matters involving individuals from Armenia, if the Immigration Judge attended a
11 meeting with the United States Ambassador to Armenia. This is inconsistent with
12 the standard applied to Judge Tabaddor where the mere invitation to attend the
13 Roundtable meeting was relied upon by Rosenblum as the most significant factor in
14 ordering Judge Tabaddor's recusal. On information and belief, the Armenian-
15 American Immigration Judge referred to earlier in this paragraph was not
16 recommended or ordered recused from any class of cases and ultimately, did not
17 obtain approval to attend the meeting because it was determined that she would
18 have been attending as a representative of the Armenian Bar Association, which
19 representative capacity was deemed impermissible under 18 U.S.C. § 205. Thus,
20 although vague and lacking uniformity, since Judge Tabaddor was singled out for
21 adverse treatment, the Agency has manifested a policy of applying its regulations
22 relating to Immigration Judge recusals in an overly broad manner which
23 prospectively chills speech and assembly outside of the workplace.

24 **G. Judge Tabaddor is Subject to Adverse Action as a Result of**
25 **Engaging in Protected Activity**

26 65. As set forth above, Judge Tabaddor sought leave to attend the Roundtable
27 event from her direct supervisor, ACIJ Fong. ACIJ Fong initially indicated he was
28 not inclined to grant Judge Tabaddor's request for leave. When Judge Tabaddor

1 protested the decision, the matter was escalated by ACIJ Fong to Rosenblum who
2 as stated above, was the Chief Counsel of the Agency's Employee/Labor Relations
3 Unit, which, *inter alia*, deals with employee discipline issues. Rosenblum
4 approved Judge Tabaddor to attend the Roundtable event, but recommended she
5 recuse herself from all cases involving individuals from Iran. Directly after Judge
6 Tabaddor protested the recusal recommendation as unlawful, Judge Tabaddor was
7 *ordered* recused from all cases involving individuals from Iran, *in perpetuity*. The
8 Agency subjected Judge Tabaddor to adverse employment actions because of her
9 participation in protected activities, that is in opposing action Judge Tabaddor
10 reasonably believed to be discriminatory. The recusal order imposed upon Judge
11 Tabaddor would dissuade a reasonable worker from making or supporting a charge
12 of discrimination.

13 66. Additionally, beginning within days after protesting the recusal
14 recommendation and later continuing to protest the recusal order, Judge Tabaddor
15 was subject to restriction in connection with outside speaking activities in her
16 personal capacity. In particular, after protesting the Agency's unlawful conduct,
17 Judge Tabaddor was denied use of her title (with an appropriate disclaimer) in
18 connection with approvals for outside speaking engagements where, prior to
19 protesting her recusal, she had been approved to use her title (with an appropriate
20 disclaimer) in connection with the exact same outside activities.

21 67. Agency practice is generally to allow Immigration Judges to use their title
22 with a disclaimer when appearing at outside events in their personal capacity. On
23 information and belief, the Agency has not uniformly restricted Immigration Judges
24 in the their use of title with respect to outside activities for which Immigration
25 Judges participate in their personal capacities. The restrictions on Judge Tabaddor's
26 use of title, with an appropriate disclaimer, would not have occurred had Judge
27 Tabaddor not protested the recusal recommendation and order. The restrictions
28

1 imposed upon Judge Tabaddor would dissuade a reasonable worker from making or
2 supporting a charge of discrimination.

3 68. Similarly, after Judge Tabaddor filed her EEO complaint of discrimination,
4 the Agency took further adverse employment actions against Judge Tabaddor for
5 having done so in denying her ability to be compensated for teaching courses
6 relating to immigration law at UCLA, contrary to the provisions of the applicable
7 regulation, 5 C.F.R. § 2635.807. The restriction on Judge Tabaddor's ability to
8 receive compensation for teaching at an institution of higher learning would
9 dissuade a reasonable worker from making or supporting a charge of
10 discrimination.

11 **FIRST CAUSE OF ACTION**

12 **Violation of First Amendment (Declaratory Relief; Injunctive Relief)**
13 **(All Defendants)**

14 69. Plaintiff repeats and realleges each and every allegation set forth in the
15 preceding paragraphs of the Complaint as if fully set forth herein.

16 70. Since ordering Judge Tabaddor's recusal, the Agency has instituted a policy
17 of enforcing its the regulations and policies relating to the recusal of Immigration
18 Judges in a manner that chills potential speech and association by Immigration
19 Judges. The Agency's enforcement of the regulations and policies relating to the
20 recusal of Immigration Judges based upon speech and association with particular
21 groups is overly broad and induces Immigration Judges to curtail their expressive
22 and speech related activities outside of the workplace. Such restrictions are not
23 narrowly tailored and they deter speech on matters of public concern and
24 association wholly unrelated to the Immigration Judges' government employment
25 based on content and in a prospective manner. The Agency has no compelling or
26 substantial interest in such enforcement, and additionally, such enforcement is not
27 necessary for the Agency to operate efficiently and effectively.

28

1 71. Plaintiff thus seeks entry of a judgment declaring the Agency's conduct
2 unconstitutional in violation of the First Amendment and for injunctive relief to
3 enjoin the Agency from enforcing or applying its recusal policies in such a manner.

4 **SECOND CAUSE OF ACTION**

5 **Unlawful Discrimination in Violation of Title VII**

6 **(Defendant Holder)**

7 72. Plaintiff repeats and realleges each and every allegation set forth in the
8 preceding paragraphs of the Complaint as if fully set forth herein.

9 73. The Agency discriminated against Judge Tabaddor with the respect to the
10 terms, conditions and privileges of her employment on the basis of her national
11 origin, race and religion in violation of Title VII.

12 74. The Agency singled out Judge Tabaddor for adverse treatment in
13 recommending and then ordering her recusal from all cases involving individuals
14 from Iran. A perpetual recusal order of this nature is unprecedented. Judge
15 Tabaddor's nationality, race, and/or religion and association with the same, were
16 the sole and/or motivating reasons for the recusal order.

17 75. On its face the recusal recommendation and order were based upon Judge
18 Tabaddor's race, national origin and association with Iranian-Americans.

19 76. The recusal recommendation and order were issued without any due
20 deliberation by the Agency, including without factual investigation, legal or policy
21 analysis, use of a uniform process, or consultation with key ethics personnel.

22 77. The recusal recommendation and order are unsupported by any law,
23 regulation or policy and are factually baseless. The reasons proffered by the
24 Agency for issuing the recusal recommendation and order are implausible,
25 inherently flawed, inconsistent, uninformed and unworthy of credence.

26 78. The Agency's actions have undermined Judge Tabaddor's essential judiciary
27 function in making recusal decisions on a case-by-case basis and exercising
28 unimpaired judicial independence and have restricted her official duties. Further,

1 the Agency has caused Judge Tabaddor to perform her duties as an Immigration
2 Judge under the stigma of having had her impartiality impugned. Judge Tabaddor
3 is segregated from her similarly situated colleagues both in her job authority and in
4 being subject to different case assignment and recusal standards.

5 79. By reason of the Agency's intentional discrimination, Plaintiff has suffered
6 severe harm and is entitled to all remedies available under Title VII.

7 **THIRD CAUSE OF ACTION**

8 **Unlawful Retaliation in Violation of Title VII**

9 **(Defendant Holder)**

10 80. Plaintiff repeats and realleges each and every allegation set forth in the
11 preceding paragraphs of the Complaint as if fully set forth herein.

12 81. The Agency unlawfully retaliated against Plaintiff for opposing any denial
13 of leave to attend the Roundtable event, which sought to convene members of the
14 Iranian-American community, and opposing the recommendation and order that she
15 recuse herself from the entire class of cases involving Iranian nationals.

16 82. Directly after Judge Tabaddor protested the recusal recommendation as
17 unlawful, Judge Tabaddor was ordered recused from all cases involving individuals
18 from Iran in perpetuity. The recusal would not have occurred in the absence of
19 Judge Tabaddor having engaged in protected activity, including challenging any
20 denial of leave and protesting the recusal recommendation. The recusal order
21 imposed upon Judge Tabaddor would dissuade a reasonable employee from making
22 or supporting a charge of discrimination.

23 83. Beginning within days after protesting the recusal recommendation and later
24 continuing to protest the recusal order, Judge Tabaddor was subject to restriction in
25 connection with outside speaking activities in her personal capacity. The
26 restrictions on Judge Tabaddor's use of title, with an appropriate disclaimer, would
27 not have occurred had Judge Tabaddor not protested the recusal recommendation
28

1 and order. The restrictions imposed upon Judge Tabaddor would dissuade a
2 reasonable worker from making or supporting a charge of discrimination.

3 84. Similarly, after Judge Tabaddor filed her EEO complaint of discrimination,
4 the Agency took further adverse employment actions against Judge Tabaddor
5 because of having done so in denying her ability to be compensated for teaching
6 courses relating to immigration law at UCLA, contrary to the provisions of the
7 applicable regulation, 5 C.F.R. § 2635.807. The restriction on Judge Tabaddor's
8 ability to receive compensation for teaching at an institution of higher learning
9 would dissuade a reasonable worker from making or supporting a charge of
10 discrimination.

11 85. By reason of the Agency's retaliation, Plaintiff has suffered severe harm and
12 is entitled to all available remedies under Title VII.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff prays for relief and judgment as follows:

- 15 a. Awarding all remedies available under Title VII, including:
- 16 i. Injunctive relief requiring the Agency to reverse the order that Judge
17 Tabaddor recuse herself from all cases involving respondents from Iran;
- 18 ii. Injunctive relief requiring that Judge Tabaddor resume being randomly
19 assigned cases in the same manner as other Immigration Judges and
20 consistent with the needs of the Immigration Courts' docket;
- 21 iii. Injunctive relief requiring that Judge Tabaddor be permitted to exercise
22 her independent judgment to decide whether or not to recuse herself from
23 cases on an individualized basis;
- 24 iv. Injunctive relief requiring a formal written retraction and withdrawal of
25 the recusal recommendation and order as having been issued in error;
- 26 v. Injunctive relief requiring a formal written acknowledgement that the
27 Agency's order of recusal was not based on any allegation or evidence or
28

1 showing of bias by Judge Tabaddor, and that Judge Tabaddor has, at all
2 times, performed her duties free from bias and in a judicially impartial
3 manner;

4 vi. Injunctive relief requiring that the DOJ will review EOIR's policies and
5 procedures to ensure that 5 C.F.R. §2635.502 may not be applied in a
6 discriminatory, unequal or unconstitutionally overbroad manner by
7 executive branch officials against Immigration Judges and requiring
8 mandatory training thereon; and

9 vii. Nominal, consequential, compensatory and punitive damages in an
10 amount to be determined at trial; and

11 viii. Costs and expenses, including reasonable attorneys' fees;

12 b. Declaring that the Agency has violated the First Amendment and for further
13 necessary or proper relief based on such declaratory judgment, including an
14 injunction:

15 i. Invalidating the Agency's policy under 5 C.F.R. §2635.502 of executive
16 branch officials ordering recusals from classes of cases based upon
17 Immigration Judges' speech and associational activities outside of the
18 workplace and requiring mandatory training thereon; and

19 c. Granting such further relief as the Court deems just and proper.
20

21 Dated: August 12, 2014

COOLEY LLP
ALI M. M. MOJDEHI (123846)

23

24

/s/ Ali M.M. Mojdehi
Ali M. M. Mojdehi (123846)

25

26

Attorneys for Plaintiff
Immigration Judge A. Ashley Tabaddor

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Local Rule 38-1 of the Local Rules of the United States District Court for the Central District of California, Plaintiff hereby demands a trial by jury.

Dated: August 12, 2014

COOLEY LLP
ALI M. M. MOJDEHI (123846)

/s/ Ali M.M. Mojdehi
Ali M. M. Mojdehi (123846)

Attorneys for Plaintiff
Immigration Judge A. Ashley Tabaddor