

UNITED STATES MARSHALS SERVICE

AFFIDAVIT

STATE OF VIRGINIA

CITY OF Fairfax

I, JuanCarlos M. Hunt, make the following statement freely and voluntarily without promise or coercion to Patrick Anderson, who has been identified to me as an Equal Employment Opportunity (EEO) Investigator, United States Marshals Service, knowing that this statement may be used in evidence. I understand that the information is given without a pledge of confidentiality and that it may be shown to parties with a need to know. The following statement is made in response to the EEO Complaint of Discrimination filed by A. Ashley Tabaddor against the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) on November 29, 2012.

I have been advised that the claim accepted for investigation is as follows:

Judge Tabaddor alleges that EOIR discriminated against her on the basis of national origin, religion, race, and reprisal related to the issuing of an ethics opinion to recuse herself from immigration cases involving Iranians. Judge Tabaddor further alleges that EOIR has retaliated against her for claiming that ethics opinion is discriminatory.

I hereby solemnly swear or affirm:

**National Origin**

**National Origin Discrimination** The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

**QUESTION #1:** For the record, what is your full name and job title?

**ANSWER:**

JuanCarlos M. Hunt – EEO and Diversity Programs Director.

**QUESTION #2:** Where were you employed at the time the complaint was filed? Please provide the name of the agency, division, location and position occupied. How long have you worked in your current position? How long have you worked for the agency?

**ANSWER:**

Department of Justice, EOIR, Office of the Director, Director of EEO and Diversity Programs.

I have worked in my current position since June of 2012.

I have worked for EOIR since February of 2007.

**QUESTION #3:** Who were your 1<sup>st</sup> and 2<sup>nd</sup> level supervisors? Please provide their names and job titles.

**ANSWER:**

1<sup>st</sup> level – Ana Kocur, EOIR Deputy Director

2<sup>nd</sup> level – Juan Osuna, EOIR Director

**QUESTION #4:** What is your National Origin?

**ANSWER:** Hispanic.

**QUESTION #5:** To your knowledge, what is Judge Tabaddor's National Origin? When and how did you become aware of her National Origin?

**ANSWER:**

Iranian. Upon reviewing her complaint.

**QUESTION #6:** To your knowledge, have other EOIR staff members been required to recuse themselves from cases involving members of their prospective National Origin? If so, who are they and what was their National Origin? When did this action take place?

**ANSWER:**

I am not aware of any immigration judge (IJ) or other EOIR staff member being required to recuse themselves from cases involving members of their prospective national origin.

Provided by investigator:

In an email received by the EEO Investigator on March 20, 2013, you state that you were the Deputy Designated Agency Ethics Official (DDAEO), when Judge Tabaddor received an email from Mr. Jeff Rosenblum, Acting Equal Employment Opportunity Officer (EEOO) recommending that she disqualify herself from matters involving individuals from Iran due to her activity in the Iranian American community.

**QUESTION #7:** Specifically, at what time did you serve at the DDAEO? What is the function of the DDAEO position?

**ANSWER:**

The nomination that was approved for me to serve as the DDAEO made it effective as of March 26, 2012. There has been no new delegation for an EOIR DDAEO, although it is my understanding that as of February 2013, EOIR was seeking to have a new delegation approved, which was pending at the Department.

The function of the DDAEO is to administer the ethics program at the DDAEO's component.

**QUESTION #8:** Based on your position as DDAEO, would you have recommended that Judge Tabaddor recuse herself from cases involving Iranian Nationals? If not, why?

**ANSWER:**

I would not have recommended that Judge Tabaddor recuse herself from cases involving Iranian Nationals. The ethics opinion cited 5 C.F.R. § 2635.502(a). That regulation states in pertinent part:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the *financial interest of a member of his household*, or knows that a person with whom he has a *covered relationship is or represents a party to such matter*, and where the *employee determines* that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter . . .

(emphasis added).<sup>1</sup> Applying the facts provided to the regulatory definition, it was inappropriate to require Judge Tabaddor to recuse herself from all cases involving Iranians.

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<sup>1</sup> Additionally, 5 C.F.R. §2635.502, states in pertinent part:

(b) *Definitions.* For purposes of this section:

(1) An employee has a *covered relationship* with:

(i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

**QUESTION #9:** To your knowledge, was Mr. Rosenblum aware of the fact that you were designated as the DDAEO?

**ANSWER:**

Yes.

**QUESTION #10:** Why did you believe the response Mr. Rosenblum provided to Judge Tabaddor was discriminatory in nature? Specifically, what part of his response did you feel was discriminatory?

**ANSWER:**

Requiring Judge Tabaddor to recuse herself from cases involving Iranians was problematic for me because it was based on the fact that she was "very active" in the Iranian American community. It is akin to saying an immigration judge cannot hear cases involving Africans if he is very active in the African American community, an immigration judge cannot hear cases involving Chinese persons if she is very active in the Chinese American community, or cannot hear cases from Hispanics if he is very active in the Hispanic American community.

**QUESTION #11:** To your knowledge, does the EOIR EEO Officer normally provide responses to ethical concerns as those received by Judge Tabaddor from Mr. Rosenblum? Please provide specifics.

**ANSWER:**

Mr. Rosenblum was the Acting Ethics Officer not the EEO Officer at the time, sorry about the confusion. The ethics matter came up as a routine speaking engagement request. As such, it was appropriate for Mr. Rosenblum to initially review this matter. However, he escalated into a recusal opinion, with which he should have consulted with me as the DDAEO. Similarly, when Judge Tabaddor was expressing concern over the decision and because he was the Employee Labor Relations Chief (and so there was the strong potential for a conflict of interest to arise as evidenced by the fact that EOIR ELR is conflicted out of this case now), he should have consulted with me.

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(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

*NOTE: Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.*

**QUESTION #12:** Have you discussed or sought advice from anyone in the EOIR with regards to the recusal request received by Judge Tabaddor? If so, who did you speak with? What advice or guidance did you receive?

**ANSWER:**

I was not consulted in the decision that Judge Tabaddor recuse herself from hearing cases with Iranians and was not aware of the decision until our EEO office received the complaint. At that point, I discussed my potential conflict of interest concerns with the EEO Manager Andrew Press. I felt that I should request that another DOJ component handle the EEO investigation and Mr. Press agreed.

**QUESTION #13:** To your knowledge, has any other employee been mandated to recuse themselves from cases because of their personnel affiliations as Judge Tabaddor was? If so, please provide their name, affiliation and the person responsible for the mandate.

**ANSWER:**

No.

**QUESTION #14:** Prior to these events, have you had any conversations with Judge Tabaddor about her social or political affiliations and their possible effect on her position as an Immigration Judge? If so, when did you speak with her?

**ANSWER:**

No.

**QUESTION #15:** During your tenure as DDAEO, have you spoken with anyone regarding the personal speaking engagements request made by Judge Tabaddor?

**ANSWER:**

No.

Provided by investigator:

Judge Tabaddor alleges that on September 7, 2012, Mr. Rosenblum confirmed the recusal order was the official position of the Office of General Counsel (OGC), and that the order was not reviewable by any other entity.

**QUESTION #16:** Was the aforementioned statement by Judge Tabaddor brought to your attention? If so, what was your response? To your knowledge, what OGC member was Mr. Rosenblum referring to in this conversation?

**ANSWER:**

No. I learned of it when I received the complaint. Mr. Rosenblum may be referring to Ms. King, who was not the DDAEO but was Mr. Rosenblum's only supervisor in OGC in September of 2012. However, I have no actual knowledge regarding who Mr. Rosenblum was referring to in that conversation except that it was not me.

**QUESTION #17:** To your knowledge, does OGC have the final say on matters of this nature or are they reviewable by the EOIR Director?

**ANSWER:**

OGC does not have the final say on matters of this nature. I am not aware of any basis that would preclude the DDAEO, as the administrator of the ethics program, or the EOIR Director, who nominates the DDAEO, from reviewing the opinion of the ethics officer.

**QUESTION #18:** Prior to these events, have you had any conversations with Judge Tabaddor about her social or political affiliations and their possible effect on her position as an Immigration Judge?

**ANSWER:**

No.

**QUESTION #19:** Do you have any documentation to support the decision to have Judge Tabaddor recused from cases involving Iranian American citizens? If so, please provide a copy for the record?

**ANSWER:**

I do not have any documentation other than the documents Judge Tabaddor provided to support the decision that she not hear cases involving Iranians.

**QUESTION #20:** Are you aware of the agency's anti-discrimination policy? Was Judge Tabaddor ordered to recuse herself from cases involving Iranian Americans based solely on her National Origin (Iranian)? If not, why was she asked to recuse herself?

**ANSWER:**

Yes. I do not know. That's a good question; I do not know.

**QUESTION #21:** What is your race?

**ANSWER:**

Black and White.

**QUESTION #22:** To your knowledge, what is Judge Tabaddor's race? When and how did you become aware of her race?

**ANSWER:**

In her complaint, Judge Tabaddor stated under the race or color box that she was Asian, Middle Eastern, and Persian. I would consider Middle Eastern and Persian to be her national origin, so I presume her race is Asian.

**QUESTION #23:** During your tenure as DDAEO, have other staff members been required to recuse themselves from cases involving members of their prospective race? If so, who are they and what is their race? When did this action take place?

**ANSWER:**

During my tenure as DDAEO, I am not aware of any staff member being required to recuse themselves from cases because the cases involved members of their prospective race.

**QUESTION #24:** To your knowledge, was Judge Tabaddor ordered to recuse herself from cases involving Iranian Americans based solely on her race (Iranian American)?

**ANSWER:**

I do not know if Judge Tabaddor was ordered to recuse herself from cases involving Iranian Americans based solely on her race.

**QUESTION #25:** To your knowledge, was the decision to not allow Judge Tabaddor to speak at, or use her official title at the Iranian Women's Leadership Conference (The "Conference") denied because of her race?

**ANSWER:**

I do not know.

**QUESTION #26:** For the record, what is your religion?

**ANSWER:**

Muslim.

**QUESTION #27:** At the time of the alleged discriminatory event, which is the foundation of this complaint, were you aware of Judge Tabaddor's religious beliefs?

**ANSWER:**

No.

**QUESTION #28:** To your knowledge, did Judge Tabaddor's religious beliefs factor into any decisions or recommendations made by Mr. Rosenblum with regard to her personal appearance requests?

**ANSWER:**

I do not know.

**QUESTION #29:** To your knowledge, did Judge Tabaddor express opposition to the recusal order she received? Were any actions taken against Judge Tabaddor, by you, based upon her opposition to the recusal order?

**ANSWER:**

Yes. No. In fact, the matter was not brought to my attention until she filed her complaint. Had I been consulted regarding the opinion or when Judge Tabaddor expressed her opposition, I would have revised the order so that she would not have to recuse herself from all cases involving Iranians pursuant to 5 C.F.R. § 2635.502(a) because the facts did not support such an order pursuant to 5 C.F.R. § 2635.502 and regardless of whether Mr. Rosenblum intended to discriminate against Judge Tabaddor the order was discriminatory.

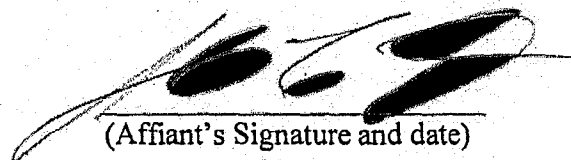
**QUESTION #30:** Do you have anything else to add?

**ANSWER:**

Not at this time.

OATH

I have read the above statement consisting of 8 pages, including this page. I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that my statement is true, correct, and complete to the best of my knowledge, information, and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to individuals with a right to know.

  
(Affiant's Signature and date) 4/4/13

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Signed before witness

ON THIS \_\_\_ DAY OF \_\_\_\_\_, 2013