

## AFFIDAVIT

I, Kathleen Silbaugh, make the following statement freely and voluntarily, 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 am currently employed as the Deputy Director in the Department of Justice's Departmental Ethics Office (DEO), located in the Justice Management Division. DEO is responsible for administering the Department-wide ethics program and for implementing Department-wide policies on ethics issues; it also supervises the ethics programs in the Department of Justice components. Each component has a Deputy Designated Agency Ethics Official (DDAEO) who is responsible for administering the ethics program within his or her component.

An individual is designated as the DDAEO within a component through an evaluation of the position and the person holding that position. The position must be one that is respected by employees throughout the component. It also should be a position that provides its holder with familiarity with component-wide operations, and an understanding of the impact of specific ethics determinations and decisions.

Historically in EOIR, the person serving as General Counsel has been designated as the DDAEO.

My understanding from a discussion with Janice Rodgers, Director, DEO, is that positions such as Equal Employment Opportunity Director or Employee Relations or Labor Relations Director are not appropriate to serve as an ethics official because of the responsibilities of these positions within an investigative and grievance/adjudicatory program.

To the best of my recollection, on September 7, 2012, I was contacted by Jeff Rosenblum, of the Executive Office of Immigration Review, in connection with his advice to Ms. Tabaddor that her leadership activities on behalf of the Iranian community may create the appearance of a conflict of interest pursuant to the applicable ethics regulations, specifically 5 CFR § 2635.502.

Mr. Rosenblum provided background information on the issue, including that the Immigration Judge (IJ) Tabaddor is Iranian, and she was going to speak at a White House event about issues specific to the Iranian community. I agreed that there was no basis within the ethics rules preventing the IJ from speaking at an event sponsored by the White House Office of Public Engagement on such issues, unless the conflict created by doing so made IJ Tabaddor ineffective in performing her official duties. Specifically, because speaking at a White House event creates a high profile on that issue, EOIR should be concerned about an appearance of a conflict of interest, or bias, related to IJ Tabaddor and cases involving Iran. I agreed with Mr. Rosenblum that the appearance of bias necessitated the IJ being recused from cases involving Iran. Mr. Rosenblum had checked and learned that the number of cases involving Iran was quite

small. Therefore, there would be no hardship to that court if IJ Tabaddor was recused from such matters.

In my opinion, Mr. Rosenblum had identified the ethics concerns correctly and had proposed the appropriate course of action. In particular, because there would be no hardship to her jurisdiction if the IJ Tabaddor was recused, the IJ could speak in her personal capacity at the White House, then be recused from cases involving Iran.

I also agreed with Mr. Rosenblum that the IJ Tabaddor's inquiry was governed by the Standards of Ethical Conduct.

On September 25, 2012, I received an email message from Mr. Rosenblum informing me that Dana Leigh Marks, President, National Association of Immigration Judges, had sent him a summary of the ethics opinion related to IJ Tabaddor along with Ms. Marks' interpretation of the issues. Ms. Marks' document was attached to the email.


I reviewed the document titled, "Summary Regarding Ethics Opinion and Recusal Instructions, Judge A. Ashley Tabaddor, September 19, 2012." To the best of my recollection, I spoke briefly with Janice Rodgers, Director of DEO, about the potential conflict of interest and recusal obligation created by these facts. She agreed that these recommendations were correct.

To the best of my recollection, I stated in a telephone conversation with Mr. Rosenblum that although I was not versed in the collective bargaining agreement referenced, this letter did not change my opinion that the requirements and obligations under the Standards of Ethical Conduct, as discussed previously, still apply.

I recall that Mr. Rosenblum said that this matter would be discussed at a negotiation session with the National Association of Immigration Judges. That was the last substantive interaction that I recall having on this matter.

Pursuant to 28 U.S.C. § 1746:

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

  
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Kathleen Silbaugh

4/16/2013  
Date