



October 23, 2012

Sent Via E-Mail

Andrew Press
EEO Counselor
U.S. Department of Justice
Equal Employment Opportunity Program
5107 Leesburg Pike, Suite 1904
Falls Church, VA 22401

Re: A. Ashley Tabaddor/EEO Complaint – EOIR

Dear Mr. Press:

This letter follows up on Judge Tabaddor's counseling interview with you on October 19, 2012. Based on that conversation, we discussed that we would provide clarification and amendment of a few issues. To that end, I am updating the information I provided you by letter dated October 18, 2012, which sets forth the claims, bases and remedies Judge Tabaddor is asserting in her complaint of employment discrimination. As we discussed, this complaint arises out of orders by several individuals and entities in the U.S. Department of Justice that Judge Tabaddor recuse herself from all matters involving respondents from Iran because of her involvement in the Iranian American community.

A summary of the clarifications and amendments, as further discussed below, is as follows:

1. Judge Tabaddor includes all of the following as Respondents in this complaint:
 - (1) Jeff Rosenblum of the Office of General Counsel ("OGC") of the Executive Office of Immigration Review ("EOIR");
 - (2) EOIR OGC;
 - (3) the U.S. Department of Justice Ethics Office ("DEO");
 - (4) the Los Angeles Assistant Chief Immigration Judge ("ACIJ") Thomas Fong; and
 - (5) EOIR

(Collectively, "Respondents").

2. In the event OGC made the official decision to order Judge Tabaddor to recuse herself from matters involving respondents from Iran, acts of discrimination also occurred on August 28,

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2012 when Mr. Rosenblum sent Judge Tabaddor an email stating that she "should" recuse herself from the specified matters. *See Exhibit A.*

3. As clarification, the basis for Judge Tabaddor's claim of reprisal is that after she protested Mr. Rosenblum's recusal recommendation by email on August 20, 2012, specifically on grounds that it was because of her Iranian national origin, Respondents retaliated against her:

(a) on August 28, 2012 when they held her to an unjustified and unsupported recusal standard, and changed its July 5, 2012 "recommendation" of recusal to an August 28, 2012 requirement of recusal (by stating in the August 28, 2012 email that she "should disqualify [herself] from matters involving respondents from Iran" and that "should disqualify yourself from cases involving respondents from Iran to avoid any appearance problems." *See Exhibit A*)).

(b) on August 28, 2012 when they denied her the ability to speak at the Iranian American Women's Leadership Conference in her personal capacity with use of her title and a disclaimer, *see Exhibit C*, though they had allowed her to do so the previous year, *see Exhibit D*. Instead, while Respondents allowed her to attend the event in her personal capacity, on September 10, 2012 they reiterated that she "cannot be listed by or with [her] official title or affiliation." Respondents did not provide any explanation for this material change in position. *See Exhibit C*. Judge Tabaddor requested that ACIJ Fong reconsider the decision disallowing use of her title at the Conference, but he never replied to that request. *Id.*

(c) on September 10, 2012, when she again protested Respondents' recusal order when she stated to Judge Fong that she, "disagree[s] with the characterization of facts and the conclusion of the EOIR OGC," and pointed out Respondents' decision to hold her to a different recusal standard than Agency rules contemplate. *See Exhibit A*. Namely, those rules do not contemplate recusals not initiated by the parties or the Immigration Judge. Here, Respondents have ordered Judge Tabaddor to recuse herself from cases involving respondents from Iran even though neither she nor the parties believe recusal is warranted.

4. Judge Tabaddor amends her Remedies to include an order requiring that a notice be sent to *all parties* (rather than just respondents as previously indicated) who received a recusal order from Judge Tabaddor (pursuant to the OGC's August 28, 2012 recusal instruction and ACIJ Fong's September 10, 2012 recusal instruction) stating that Judge Tabaddor's recusal order was sent in error. Thus, the fully amended remedies Judge Tabaddor is seeking include:

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(1) an order reversing Respondents' August 28, 2012 and September 10, 2012 orders that she recuse herself from all cases involving respondents from Iran, and permitting her to exercise her independent judgment to decide whether or not to recuse herself from cases;

(2) an order requiring OGC to formally withdraw its opinion that she recuse herself from all cases involving respondents from Iran;

(3) an order requiring that a notice be sent to all parties who received a recusal order from Judge Tabaddor (pursuant to the OGC's August 28, 2012 recusal instruction and ACIJ Fong's September 10, 2012 recusal instruction) stating that Judge Tabaddor's recusal order was sent in error;

(4) damages for emotional distress caused by Respondents' discrimination on account of national origin, race, religion and reprisal;

(5) costs and attorneys' fees; and

(6) any other remedies available under any applicable law, including but not limited to Title VII.

5. As we discussed, Judge Tabaddor's race for the purposes of her claim of race discrimination includes Middle Eastern, Persian and Asian.

In the interest of completeness, I am also including here an updated version of the Factual Background, Claims of Discrimination and Remedies Sought set forth in my October 18, 2012 letter to you, which incorporates the above-stated clarifications and amendments that we discussed on October 19, 2012.

Factual Background

Judge Tabaddor has been an Immigration Judge with the EOIR since 2005. She is Iranian American and a Muslim. Her race is Middle Eastern, Persian and Asian. Throughout her employment with the EOIR, Judge Tabaddor has had an impeccable employment record. Like other Immigration Judges, during the course of her tenure Judge Tabaddor has been asked to participate in a variety of professional, academic and community activities. Whenever required by EOIR rules and regulations, Judge Tabaddor has sought EOIR approval to engage in those activities. EOIR has routinely granted Judge Tabaddor's requests to participate in a range of activities outside of work in her personal capacity, including but not limited to invitations to speak or otherwise participate in events organized by Iranian American and Muslim groups. Judge Tabaddor also has requested, and been granted approval to participate in events organized

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by other organizations, including organizations such Kids in Need of Defense, the Pacific Council on International Policy, as well as academic institutions such as her *alma mater* the University of California at Los Angeles, and University of California, Hastings School of Law.

In late June 2012, Judge Tabaddor requested permission from ACIJ Fong to attend a Roundtable meeting she had been invited to at the White House addressing an overview of the federal initiatives relevant to the Iranian American community. *See* Exhibit B (including the Invitation to attend the White House Roundtable meeting). ACIJ Fong apparently forwarded her request to EOIR's OGC. *Id.* In a July 5, 2012 email from Jeff Rosenblum on behalf of the OGC, it granted Judge Tabaddor approval to attend the White House Roundtable meeting in her personal capacity. *Id.* In the closing paragraph of his email, Mr. Rosenblum *sua sponte* stated that he "recommended" that Judge Tabaddor begin to recuse herself from "any matter involving individuals from Iran that comes before [her] in [her] capacity as an Immigration Judge" because of her activities in the Iranian American community, and her participation in the White House event that he had simultaneously granted her approval to attend. Without making any finding that any of Judge Tabaddor's prior activities had resulted in any appearance of impropriety, or that her attendance at the White House event would result in such appearance of impropriety, Mr. Rosenblum stated: "Pursuant to 5 C.F.R. § 2635.502(a), an employee should not participate in a matter in which 'circumstances would cause a reasonable person with knowledge of the relevant facts to question [her] impartiality in the matter.'" *Id.*

On August 20, 2012, Judge Tabaddor sought clarification of Mr. Rosenblum's recommendation that she recuse herself from cases involving respondents from Iran. *See* Exhibit A. She specifically asked that Mr. Rosenblum identify why her activities in the Iranian American community would create an appearance of bias, including whether it was because she is Iranian American. *Id.* She also asked Mr. Rosenblum whether she was being held to the same standard as other Immigration Judges who are of a certain social group or religion and participate in community activities involving that social group or religion. She specifically stated, "Is it because I am an Iranian-American?" By doing so, Judge Tabaddor protested Mr. Rosenblum's recommendation that she recuse herself from cases involving respondents from Iran. She specifically requested that OGC provide a "fully analyzed opinion on the issue along with specific instructions" or that "the ethics office reconsider [Mr. Rosenblum's] 'recommendation' and clarify the record on the matter." *Id.*

On August 28, 2012, Mr. Rosenblum responded to Judge Tabaddor's August 20, 2012 email and amended the OGC opinion from a recommendation to an apparent instruction, stating that Judge Tabaddor "*should* disqualify [herself] from cases involving respondents from Iran to avoid any appearance problems." *Id.* (Emphasis added). In so deciding, Mr. Rosenblum did not cite any specific reasons why her activities in the Iranian American community would create an

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appearance of bias. Instead, he made blanket, unsupported conclusions that Judge Tabaddor was a "prominent advocate for the Iranian-American community," and that she had "engag[ed] in advocacy at [a] high level" on behalf of the Iranian American community. *Id.* Mr. Rosenblum also stated that Judge Tabaddor's "activities are well-documented in the public domain" but failed to cite a single of those activities as a basis for his decision, let alone explain how her involvement in them would create an appearance of impropriety.

In his August 28, 2012 email Mr. Rosenblum went on to say that while Judge Tabaddor could choose the outside activities she wished to participate in, "those choices may have consequences, such as [her] ability to participate in particular matters officially." *Id.* As an example, Mr. Rosenblum cited 5 C.F.R. § 2635.502(b)(1)(v), which requires employees to disqualify themselves from matters involving organizations in which they are active participants. Here, though, Judge Tabaddor is not being asked to recuse herself from cases involving specific organizations, but rather cases involving an entire nationality.

Mr. Rosenblum also failed to state that he had applied a uniform standard in deciding to recommend recusal in Judge Tabaddor's case. In his August 28, 2012 email he claimed that OGC had recommended that Immigration Judges disqualify themselves from a particular class of matters in similar circumstances, but he did not identify those other matters or how those circumstances were similar to those faced by Judge Tabaddor. *See Exhibit A.*

In an email dated September 5, 2012, Judge Tabaddor requested further clarification of Mr. Rosenblum's recusal recommendation, including whether it was an official opinion of the EOIR. *Id.* She also reiterated her request that the recommendation be reviewed. *Id.* On October 7, 2012, Mr. Rosenblum confirmed that his recommendation was an official opinion of EOIR, and that he "consulted with the Departmental Ethics Office (DEO) concerning the issue. DEO confirmed the OGC's opinion." *Id.*

Since the time Judge Tabaddor protested the Respondents' recusal opinion on August 20, 2012, they have subjected her to further adverse treatment. In response to a recent request she made on August 27, 2012 to speak at the Iranian American Women's Leadership Conference, OGC and ACIJ Fong denied her the ability to speak at the Conference in her personal capacity with use of her title and a disclaimer, *see Exhibit C*, though they had allowed her to do so the previous year when she participated in the same event, put on by the same group and in the same capacity, *see Exhibit D*. Instead, on August 28, 2012, OGC and ACIJ Fong restricted its approval for her to attend the Conference by stating that while she could attend in her personal capacity she could not use her title with a disclaimer. *See Exhibit C*. When Judge Tabaddor questioned this material change of position, OGC failed to identify what distinguished her participation in the Conference this year relative to last year that would justify a more restrictive

approval. *Id.* Rather, On September 10, 2012, OGC simply reiterated (on behalf of itself and ACIJ Fong) that she “cannot be listed by or with your official title or affiliation” at the Conference. Judge Tabaddor requested that ACIJ Fong reconsider that decision, but he never replied to that request. *Id.*

In an email dated September 10, 2012, Judge Tabaddor again protested Respondents’ recusal order by stating that she “disagree[s] with the characterization of the facts and the conclusions of the EOIR OGC.” See Exhibit A. She also pointed out that the order was not consistent with EOIR rules, which do not contemplate recusals in cases where they are not initiated by the parties or the Immigration Judge. *Id.* (citing OPPM rules). However, that same day, ACIJ Fong instructed Judge Tabaddor that he would follow the OGC’s conclusion, and thereby instructed her to recuse herself from the cases identified in the OGC opinion. *Id.* Based on this instruction, Judge Tabaddor issued recusal orders in the cases on her docket that involve respondents from Iran.

Claims of Discrimination

Respondents’ August 28, 2012 and September 10, 2012 orders to Judge Tabaddor to recuse herself from matters involving respondents from Iran violates Title VII, among other laws, on the bases of national origin, race, religion and reprisal. Respondents have ordered Judge Tabaddor, an Iranian American who is Muslim, to recuse herself from cases involving respondents from Iran because of her activities in the Iranian American community without valid justification. Iranian Americans are commonly perceived as Muslim, Middle Eastern, Persian and Asian. Certain of Judge Tabaddor’s EOIR approved activities involved Muslim American, Middle Eastern American, Persian American and/or Asian American groups. Judge Tabaddor protested Respondent’s discriminatory recusal decision, and in an act of reprisal they held her to more restrictive recusal standards and have also restricted the terms on which she can participate in outside activities.

Consistent with a Title VII violation, Respondents’ recusal order singled out Judge Tabaddor and treated her less favorably than others similarly situated on account of her national origin, race and religion. Respondents stated that their recusal decision was based on a concern about the possible perception of bias because of Judge Tabaddor’s activities in the Iranian American community whose members are commonly perceived to be Muslim, Middle Eastern, Persian and/or Asian. Because Respondents have admitted that their recusal decision was based on her status as an Iranian American, including her association with Iranian American groups, this is direct evidence of discrimination. See *Costa v. Desert Palace*, 299 F.3d 838, 852-53 (9th Cir. 2002), *aff’d* by 539 U.S. 90, 156 (2003); See, e.g., *Chacon v. Ochs*, 780 F. Supp. 680 (C.D. Cal 1991). Because of Respondents’ discriminatory acts, the terms and conditions of Judge

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Tabaddor's employment have worsened in that she is being held to different standards than other Immigration Judges, including but not limited to being prevented from exercising her independent judgment as to whether to recuse herself from cases, having her impartiality questioned, having restrictions on the kinds of cases she can hear, and having restrictions placed on her outside activities.

In addition, Respondents subjected Judge Tabaddor to reprisal in Violation of Title VII after she engaged in the protected activity of protesting Respondents' discriminatory recusal orders. *Matima v. Celli*, 228 F.3d 68, 78 (2d Cir. 2000). Among other things, after Judge Tabaddor protested Respondents' discriminatory treatment of her, Respondents: (1) held Judge Tabaddor to recusal standards that are not supported by law including in their August 28, 2012 email changing its "recommendation" of recusal to a requirement of recusal, and in their September 10, 2012 email requiring her recusal in a manner not contemplated by EOIR rules, *see* Exhibit A (2) threatened Judge Tabaddor that there are "consequences" to her participating in outside activities, and carrying out that threat by restricting her ability to participate in activities that she had been allowed to do before she protested Respondents' discriminatory recusal order. Specifically, Respondents denied her permission to attend the Iranian American Women's Leadership Conference in her personal capacity with use of her title and a disclaimer, though she was allowed to do so in the previous year, *see* Exhibits C and D.

Respondents have cited no valid non-discriminatory reason for its recusal decision. Its assertion that Judge Tabaddor's activities in the Iranian American community require recusal under 5 C.F.R. §2635.502 has no merit and is pretext for discrimination.

The OGC relied on 5 C.F.R. § 2635.502(a) in making its recusal recommendation. *See* Exhibit B. This provision states as follows:

"(a) Consideration of appearances by the employee. 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 unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section."

5 C.F.R. § 2635.502. A "covered relationship" is defined by the regulations as including, "persons with whom the employee or a member of the employee's household has a close

personal, contractual or financial relationship, or “an organization, other than a political party described in 26 U.S.C. § 527(e), in which the employee is an active participant.”

Respondents’ reliance on this particular regulation is misplaced because there is no evidence or claim that Judge Tabaddor’s involvement in cases involving Iranian nationals gives her any financial interest in the outcome of her cases. Moreover, there is no evidence or claim that any of the organizations with which Judge Tabaddor is involved represent Iranian refugees or nationals, or that these organizations would be parties before her in her capacity as an Immigration Judge. As such, this provision would not require her recusal, as argued by the OGC.

Respondents’ stated reasons for recusal similarly violate other agency rules and regulations, as well as other federal laws. *See, e.g.*, EOIR Operating Policies and Procedures (OPPM) Memorandum 05-02: Procedures for Issuing Recusal Orders In Immigration Proceedings; Ethics and Professionalism Guide for Immigration Judges; 8 C.F.R. Section 1003.10; 28 U.S.C. §455. Respondents’ failure to abide by the standards set forth in these laws is further evidence that their stated reason for their recusal order is pretextual, and that they have violated Judge Tabaddor’s rights under Title VII.

These laws, as Judge Tabaddor raised on September 10, 2012, *see* Exhibit A, do not contemplate recusals that, as here, were not initiated by the parties or the Immigration Judge presiding over the case. Further, the test for determining whether recusal is appropriate is an objective one. Here, a reasonable person with knowledge of the relevant facts would not find that Judge Tabaddor’s involvement in Iranian American organizations rises to the level of creating an appearance of impropriety. Judge Tabaddor’s activities, including all of her speaking engagements with various organizations (Iranian American and non-Iranian American) all have been cleared and approved by her ACIJ and EOIR’s ethics officer. Moreover, the general nature of Judge Tabaddor’s participation in the organizations is consistent with the public role of a judge. Judge Tabaddor’s activities do not pertain to any advocacy for Iranians seeking asylum or any other immigration benefits in the United States. Moreover, Judge Tabaddor’s activities are not limited to the Iranian American community. She is a role model and a frequent speaker in many communities, such as the academic, legal, Muslim, middle-eastern, and women’s communities, amongst others. No reasonable person would have any basis to question Judge Tabaddor’s impartiality overseeing cases of Iranian nationals or any other group.

Respondents also have failed to identify the “impropriety” it alleges a reasonable person with knowledge of her activities may perceive. To date, not a single claim of bias or impropriety has been raised by any party claiming that Judge Tabaddor favors respondents from Iran. Moreover, Respondents concede that there is no claim of actual bias or partiality. *See* Exhibit

A. Instead, the Respondents merely claims that Judge Tabaddor is a "prominent advocate for the Iranian-American community, and [her] activities are well documented in the public domain." Under Respondents' logic, an Immigration Judge who is known by the public or the parties to be a devoted Christian or one who actively participates in his or her Christian church could be required to recuse himself or herself from all cases in which the asylum seeker is Christian, or at the very least respondents whose claim for asylum is based on persecution on account of being Christian. Similarly, an Immigration Judge who is African American and involved in the African American community would be prohibited from hearing cases of respondents from Africa. However, it is clear recusal orders are not ordered in these circumstances.

Under the Respondents' logic, which also appears to conflate Iranian with Iranian American, Judge Tabaddor should recuse herself from any case in which counsel of record or a witness is of Iranian descent. Indeed, that is what the OGC opinion appears to have intended, when it recommended that Judge Tabaddor recuse herself from "any matter involving *individuals from Iran* that comes before [her] in [her] capacity as an Immigration." See Exhibit B (emphasis added). Respondents' position here appears to be based on preconceived and unsupported characterizations of the nature of Judge Tabaddor's activities combined with discriminatory preemptive action.

Remedies Sought

In bringing these claims of discrimination under Title VII, Judge Tabaddor seeks as remedies:

(1) an order reversing Respondents' August 28, 2012 and September 10, 2012 orders that she recuse herself from all cases involving respondents from Iran, and permitting her to exercise her independent judgment to decide whether or not to recuse herself from cases;

(2) an order requiring OGC to formally withdraw its opinion that she recuse herself from all cases involving respondents from Iran;

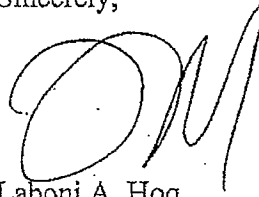
(3) an order requiring that a notice be sent to all parties who received a recusal order from Judge Tabaddor (pursuant to the OGC's August 28, 2012 recusal instruction and ACIJ Fong's September 10, 2012 recusal instruction) stating that Judge Tabaddor's recusal order was sent in error;

(4) damages for emotional distress caused by Respondents' discrimination on account of national origin, race, religion and reprisal;

(5) costs and attorneys' fees; and

(6) any other remedies available under any applicable law, including but not limited to Title VII.

Sincerely,



Laboni A. Hoq
Litigation Director
Asian Pacific American Legal Center

cc: Hon. A. Ashley Tabaddor

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Exhibit A

From: Fong, Thomas (EOIR)
Sent: Monday, September 10, 2012 7:27 PM
To: Tabaddor, A. Ashley (EOIR); Fong, Thomas (EOIR)
Subject: Re: Recusal

Yes Ashley, this is OGC's conclusion. When I get back to LOS next week, let us sit down and see how we will do this. Tom

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, September 10, 2012 03:35 PM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: Recusal

Dear Judge Fong,

I hope you are well. I am writing to follow up on the email discussions below. From my reading of Mr. Rosenblum's emails, I understand that I have been instructed by OGC and yourself to recuse myself from all cases that involve an Iranian national. While I disagree with the characterization of the facts and the conclusion of the EOIR OGC, I understand that this is the order and I am prepared to follow it. To that end, I am seeking instructions on how you would like me to proceed next.

Based on my review of the docket, I have seven (7) pending cases that involve an Iranian national as a respondent. From those seven, three (3) are new cases, *i.e.* the initial master calendar hearings are in the future. There are two (2) that are set to be heard on the merits; *i.e.* pleadings have been taken and the next hearing is to hear any application for relief. The remaining two (2) are in the midst of either a merits hearing or

contested pleadings. For example, one is an adjustment of status matter where the next hearing is to continue with additional testimony. Extensive filings and testimony have been taken in that case. The other is in the midst of a contested pleading where some initial filings and briefings have been conducted.

My understanding is that for any recusal from a case there needs to be a written decision by the IJ, specific to the case, that is served on the parties and made part of the record.

The OPPM does not seem to contemplate how to handle this type of recusal that was not initiated by the parties or the IJ. Thus, I'm not sure how you would want me to proceed.

Finally, in terms of time frame, the next hearing where an Iranian national is scheduled before me is on October 14, 2012. Thus, any guidance before that time would be greatly appreciated.

Thank you,

Ashley Tabaddor

From: Rosenblum, Jeff (EOIR)
Sent: Friday, September 07, 2012 10:15 AM
To: Tabaddor, A. Ashley (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: Seeking Clarification

Judge Tabaddor,

This is the official opinion of the Office of the General Counsel (OGC), and it is not "reviewable" by another entity. Moreover, PRAO offers guidance on the professional rules of conduct, not the Standards of Ethical Conduct for Employees of the Executive Branch (i.e., 5 C.F.R. Part 2635).

Nonetheless, based on your inquiry, I consulted with the Departmental Ethics Office (DEO) concerning this issue. DEO confirmed OGC's opinion. Thanks.

Jeff

From: Tabaddor, A. Ashley (EOIR)
Sent: Wednesday, September 05, 2012 2:47 PM
To: Rosenblum, Jeff (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR); Tabaddor, A. Ashley (EOIR)
Subject: RE: Seeking Clarification

Hi Jeff,

I hope you are well. I have read your email below and wanted to seek further point of clarification. In your email you mention that this is the opinion of OGC. Is it correct to assume that this is the official opinion of EOIR OGC or were others involved in reaching this conclusion? For example, was PRAO consulted regarding this issue? If not, can we please forward this matter for them to consider as well?

Thank you,

Ashley Tabaddor

From: Rosenblum, Jeff (EOIR)
Sent: Tuesday, August 28, 2012 5:16 AM
To: Tabaddor, A. Ashley (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: Seeking Clarification

Judge Tabaddor,

As mentioned in my July 5, 2012 e-mail, under the standards set forth in 5 C.F.R. § 2635.502(a), an employee should disqualify herself from matters in which "circumstances would cause a reasonable person with knowledge of the relevant facts to question [her] impartiality in the matter."

You are a prominent advocate for the Iranian-American community, and your activities are well-documented in the public domain, including but not limited to the internet. You

engage in advocacy at 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. Based on this involvement, it remains the opinion of the Office of the General Counsel (OGC) that under the standards set forth in section 502, you should disqualify yourself from matters involving respondents from Iran.

The fact that you are active in other areas, or that other Immigration Judges (IJs) have issues that might cause appearance problems, are all to be considered on a case-by-case basis. OGC has formally recommended that other IJs disqualify themselves from a particular class of matters in similar circumstances.

Moreover, the fact that "[e]very single one of [your] activities has been vetted through the ACIJ/ethics process" makes this issue no less of an appearance problem. If participation in these activities would cause large-scale recusals, they would not receive ethics approval. See 5 C.F.R. § 2635.802(b) (prohibiting an employee from engaging in outside activities "[i]f, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired."). To the contrary, we have been assured by ACIJ Fong that cases affected by this determination will represent a small fraction of cases heard in the Los Angeles Immigration Court (LAIC). Moreover, based on the size of the LAIC (*i.e.*, approximately 30 IJs), it will not be difficult to reassign such cases. Further, ACIJ Fong as assured us that any such matters from which you are recused will be replaced by other cases to ensure a fair distribution of work among all of the IJs in the LAIC, and so that there will be no reduction in your overall caseload.

In other words, subject to the standards set forth above and supervisory approval, you may generally choose what outside activities you participate in. However, those choices may have consequences, such as your ability to participate in particular matters officially. See, *e.g.*, 5 C.F.R. § 2635.502(b)(1)(v) (requiring employees to disqualify themselves from matters involving organizations in which they are active participants).

Please note that in no way is OGC suggesting that you have an actual bias. Rather, based on the circumstances as described, and utilizing the relevant standards, OGC has determined that you should disqualify yourself from cases involving respondents from Iran to avoid any appearance problems, as suggested in my earlier e-mail.

Feel free to contact me if you have any questions. Thanks.

Jeff

Jeff Rosenblum

Executive Office for Immigration Review

Office of the General Counsel

(703) 305-0799

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, August 20, 2012 2:08 PM
To: Rosenblum, Jeff (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: Seeking Clarification

Dear Jeff,

I hope you are doing well. I am writing to seek clarification on a comment you made in an email correspondence to me, dated July 5, 2012. In the comment, you stated:

"Finally, your request to participate in this roundtable has raised a separate ethics concern. Based on your representation that you are very active in the Iranian-American community, as well as your participation in this event, we recommend that you disqualify yourself from any matter involving individuals from Iran that comes before you in your capacity as an Immigration Judge. Pursuant to 5 C.F.R. § 2635.502(a), an employee should not participate in a matter in which "circumstances would cause a reasonable person with knowledge of the relevant facts to question [her] impartiality in the matter."

From this email, I am not certain if I am supposed to recuse myself from all cases cited above, and if so why. I am confused as to why my activities in the Iranian-American community would create an appearance of conflict of interest warranting recusal from all cases that involve an Iranian national as a respondent. My activities are not limited to the Iranian-American community. I am active in the legal community and in the academic community. I am also an active member of the Pacific Council on International

Policy. Every single one of my activities has been vetted through the ACIJ/ethics process, and much of the topics and the messages that I share in my activities cross between the various groups. Thus, the level or the nature of my activities in these communities should not be a surprise to anyone at EOIR ethics office. But most importantly, what bias are we trying to avoid the appearance of? Is it because I am an Iranian-American? Would this same standard apply to an IJ who is openly gay/lesbian and hears claims of asylum based on sexual orientation? What about the IJ who is very active in his church? Should he recuse himself from all asylum claims based on persecution of Christians?

I am not trying to be difficult, but this "recommendation" deeply concerns me. If the ethics office is indeed instructing me to disqualify myself from the cases outlined above, I would request a fully analyzed opinion on the issue along with specific instructions. Otherwise, I would ask that the ethics office reconsider the "recommendation" and clarify the record on this matter.

Thank you so much for your help,

Ashley Tabaddor

Exhibit B

From: Rosenblum, Jeff (EOIR)
Sent: Thursday, July 05, 2012 12:52 PM
To: Tabaddor, A. Ashley (EOIR); 'ashleytabaddor@gmail.com'
Cc: Fong, Thomas (EOIR); Nadkarni, Deepali (EOIR); McGonings, Michael (EOIR); Billingsley, Kelly (EOIR)
Subject: Outside Activity

Judge Tabaddor,

You have asked for approval to attend a "Roundtable with Iranian-American Community Leaders" hosted by the White House Office of Public Engagement. I have confirmed that you have been granted supervisory approval for annual leave to attend this event. You are also approved by the ethics office to participate in this activity in your personal capacity. Please note that because you are attending this event in your personal capacity, you must comply with the ethics restrictions related to personal, outside activities. *See generally* 5 C.F.R. Part 2635, subparts G and H.

Most importantly in relation to this activity, you cannot create or allow the impression that you are engaging in this activity officially, *i.e.*, on behalf of EOIR or the Department. *See* 5 C.F.R. § 2635.702(b). An employee's position or title should not be used to coerce; to endorse any product, service or enterprise; or to give the appearance of governmental sanction. *See generally* 5 C.F.R. § 2635.702. Thus, you should not use or permit the use of your position or title in relation to this personal, outside activity; this restriction obligates you to ensure that neither your position nor your official title is associated with this activity. In considering this request we consulted with the Departmental Ethics Office, who also advised that you cannot hand out your business card during this event. Should you be asked about your position or title, you may disclose it, but you must make clear that you are participating in a purely personal capacity. You also may not opine on immigration-related issues during this activity.

In addition, please keep in mind the general restrictions concerning outside activities:

- You cannot use your official title or affiliation, or create or allow the impression that you are acting officially, i.e., on behalf of EOIR or the Immigration Court;
- The outside activity must not, in any manner, interfere with the proper and effective performance of your official duties and responsibilities;
- The outside activity must not create, nor appear to create, a conflict of interest with your official duties;
- The outside activity must not reflect adversely upon the Department of Justice or EOIR;
- You cannot use official resources in relation to this activity (except to the extent that such use involves only negligible expense to the Department, in accordance with 28 C.F.R. § 45.4);
- You cannot use official time in relation to this activity, and under no circumstances may you accept the assistance of another EOIR employee in relation to this activity, even if the employee volunteers to assist;
- You should refer 5 C.F.R. §§ 2635.701-705, as well as §§ 2635.801-809 for general guidelines concerning outside activities.

As we discussed on the phone, a federal criminal statute, 18 U.S.C. § 205, generally prohibits federal employees from acting as agent or attorney for third parties, including organizations, before the federal government. You confirmed that you will be attending this event as a member of the Iranian-American community, and not on behalf of a particular organization; thus, from the information provided, your participation would not violate § 205.

Finally, your request to participate in this roundtable has raised a separate ethics concern. Based on your representation that you are very active in the Iranian-American community, as well as your participation in this event, we recommend that you disqualify yourself from any matter involving individuals from Iran that comes before you in your capacity as an Immigration Judge. Pursuant to 5 C.F.R. § 2635.502(a), an employee should not participate in a matter in which "circumstances would cause a reasonable person with knowledge of the relevant facts to question [her] impartiality in the matter."

Please let me know if you have any questions or would like to discuss this matter further.
Thanks.

Jeff

Jeff Rosenblum

Executive Office for Immigration Review

Office of the General Counsel

(703) 305-0799

From: Tabaddor, A. Ashley (EOIR)
Sent: Thursday, June 28, 2012 8:39 AM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: request for leave

Good morning Tom,

I hope you are well. Per our conversation I'm writing to officially request one day of annual leave for July 18th, 2012. I am requesting this leave to attend an event that is very important to me personally. As you know, I am very active in the Iranian-American community, and based on that I have been asked to meet with the White House per the invitation below. I understand that the day is during my two week detail to Dallas. However, I believe I can still meet the Department's goals by rescheduled the two cases set for that day to one or both of my administrative time that has been set aside for my detail. Additionally, I do not believe that my private attendance at this event would trigger any bars under the Hatch Act.

Thank you for your consideration. Please let me know if you have any further questions. I look forward to hearing from you.

Ashley

Subject: The White House: Roundtable With Iranian-American Community Leaders (DO NOT FORWARD)

The White House Office of Public Engagement

cordially invites you to a

Roundtable with Iranian-American Community Leaders

This meeting will feature several Administration officials who will provide an overview of a range of federal initiatives relevant to the Iranian-American community. It is also a time for you and other leaders to share your views on behalf of the community, as the Administration seeks to increase civic engagement across the country.

July 18, 2012

10:00AM – 4:00PM Eastern

Eisenhower Executive Office Building

Washington, DC

Please confirm your attendance by completing and returning the attached spreadsheet before July 6th as capacity is limited. This information is required of all visitors to the White House complex and is necessary for entrance into the building.

We hope that you can join us on July 18th.

Sincerely,

Paul

D. Paul Monteiro

Associate Director | White House Office of Public Engagement

202.456.4753

Exhibit C

Participation in Speaking Engagements

If you have been invited to speak at an upcoming function, your supervisor and the ethics officer will need to know the following information to evaluate your request.

- What is the nature of the event?
 - Roundtable discussion leader at the fourth Iranian-American Women's Leadership Conference, a day long program designed to empower women to pursue their personal and professional goals.
- What organization issued the invitation or is sponsoring the event?
 - A member of the organizing committee for the Iranian American Women's Leadership Conference. For more information about the event, please see <http://iawfoundation.org/>
- What is the date and time of the event?
 - Sunday, September 23, 2012, 9:00 a.m. to 5:30 p.m. My particular session will be from 2:00 to 2:30 p.m.
- What is the topic of your presentation?
 - Similar to last year, I will be discussing my personal and professional path in pursuing higher education, a law degree, and becoming a judge, with the goal of inspiring the attendees to follow their dreams. The setting for my discussion this year, however, is slightly different. I will be heading a roundtable discussion during the mentorship portion of the program.
- Who is the anticipated audience?
 - The event is intended to benefit all members of the community with an emphasis on younger Iranian-American women who are making critical decisions about their lives.
- Who are the other anticipated speakers?
 - There are many other panelists expected to participate. The total list of panelists have not been finalized but a list of confirmed panelist to date can be found at <http://iawfoundation.org/events/1/>. The panelists include Iranian-American women who have accomplished personal and professional goals in all fields of practice.
- Will there be any food or refreshments served as a part of the event?
 - Yes.
- Is there a fee to attend the event? If yes, what is the fee?
 - The general admission fee is \$100.
- Are you planning on attending the event in addition to speaking? If so, were you offered a reduced or waived fee to attend the event? What is the value of the savings?
 - I do plan on attending the event and I intend on paying for the general admission fee.
- Will there be any fund-raising at the event? If yes, please describe.
 - No.

- Has the organization offered you any compensation for the event?
- No, but parking may be provided.
- Has the organization offered to reimburse you for the costs of attendance (airfare, lodging, mileage, etc.)?
- No.
- Will you distribute any written material incident to your speaking engagement? If yes, please describe.
- No.

Please submit this information, and a copy of your invitation, if there is one, to your supervisory ACIJ. He or she will grant or deny permission for you to participate in the event and, if permission is granted, forward your request to the Ethics Office for clearance. The Ethics Office will issue further guidance to you by e-mail.

Revised March 2008

Tabaddor, A. Ashley (EOIR)

From: Fong, Thomas (EOIR)
Sent: Monday, August 27, 2012 2:27 PM
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: speaking engagement

ACIJ approval given.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, August 27, 2012 12:17 PM
To: Fong, Thomas (EOIR)
Subject: speaking engagement

Hi Tom,

I have been asked to return as a speaker at the 4th Iranian American Women's Leadership Conference. The topic of my conversation is basically the same as last year, except that I will be leading a roundtable discussion during the mentorship phase of the conference rather than part of a panel discussion at a breakout session. I have attached the request form that includes the updated information. Please let me know if you have any questions.

Thanks!

Ashley

Tabaddor, A. Ashley (EOIR)

From: EOIR, Ethics (EOIR)
Sent: Tuesday, August 28, 2012 1:18 PM
To: Tabaddor, A. Ashley (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: speaking engagement
Attachments: Iranian American WLC speaking engagement 2.wpd

Hi Ashley,

You have requested ethics advice in connection with a speaking opportunity at the Iranian-American Women's Leadership Conference on Sunday, September 23, 2012. In support of your request, you have submitted the attached form detailing your moderator/speaking role, and provided additional information (below).

You have indicated that you will not receive any compensation for this event, and that you intend to pay the full conference fee. Also, your supervisor, ACIJ Fong, has approved your request to participate in your personal capacity (per his e-mail, also below).

Your speaking request is approved in your personal capacity, subject to the following guidelines:

- When speaking in a purely personal capacity, you *cannot* be listed by or with your official title or affiliation. See 5 C.F.R. § 2635.807(b). This general rule provides that if an employee's speaking endeavor is private, it should be disassociated from the employee's position. This avoids the possibility of Governmental sanction of the speech (or the appearance thereof).

Please note, however, that under the circumstances your position with EOIR may be listed in a biographical sketch, along with several other biographical facts, provided that it is no more prominent than any other biographical detail. The ethics rule allowing the listing of your current position only as one of several biographical facts permits important information about you to be revealed in a manner that does not suggest Governmental sanction of the speech or the conference.

- Throughout your presentation, you may not create or allow the impression that you are speaking officially, i.e., on behalf of EOIR or the Department of Justice.

- You may not disclose nonpublic information that you acquire in connection with your official duties.

See generally 5 C.F.R. Part 2635, subpart G; 5 C.F.R. § 2635.807(b). In addition, please note the following restrictions applicable to all outside activities:

- The outside activity must not, in any manner, interfere with the proper and effective performance of your official duties and responsibilities;

- The outside activity must not create, nor appear to create, a conflict of interest with your official duties;

- The outside activity must not reflect adversely upon the Department of Justice or the EOIR;

If matters relating to this outside activity arise in relation to your official duties, you should seek further ethics guidance.

See 5 C.F.R. §§ 2635.702, .704, .705, and .802.

Finally, as a general rule employees may use Government property only for official business or as authorized by the Government. 5 C.F.R. §§ 2635.101(b)(9), 704(a); 28 C.F.R. § 45.4. Department policy provides, however, that you may use the Government office, the library, word processing, and other similar office equipment and facilities on your own time in connection with a personal use, if there is only negligible expense to the Government (such as electricity, ink, small amounts of paper, and ordinary wear and tear). See 28 C.F.R. § 45.4. Under no circumstances may work from this outside activity be assigned to, or be otherwise required of, Government clerical or support staff. 5 C.F.R. § 2635.705(b).

We encourage you to continue to seek ethics advice in the future. If you have any questions about this event or future situations, please feel free to contact me by e-mail or at (703) 605-1280; or submit your question to the EOIR ethics mailbox by using the address book in Outlook.

Thank you.

Charles F. Smith
Associate General Counsel
Executive Office for Immigration Review
(703) 605-1280

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, August 27, 2012 6:20 PM
To: EOIR, Ethics (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: FW: speaking engagement

Good afternoon,

I have been asked to return as a participant in the Iranian American Women's Leadership Conference. ACIJ Fong has already approved my speaking engagement. I have attached the form with the updated information. The only addition is that the session will likely be entitled- "From Law School to the Bench- How to Create Your Own Path to Becoming a Judge." ACIJ Fong has been informed of the proposed title as well. Please let me know if you have any questions.

Thank you,
Ashley Tabaddor

From: Fong, Thomas (EOIR)
Sent: Monday, August 27, 2012 2:27 PM
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: speaking engagement

ACIJ approval given.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor

Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

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To: Fong, Thomas (EOIR)
Subject: speaking engagement

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Thanks!

Ashley

abaddor, A. Ashley (EOIR)

From: Tabaddor, A. Ashley (EOIR)
Sent: Tuesday, August 28, 2012 1:56 PM
To: EOIR, Ethics (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: RE: speaking engagement

Good afternoon Charles,

I hope you are well. Thank you for the reply. I would like to seek clarification on the use of title provision addressed below. In my past engagements, all of which have been in my personal capacity, it was noted that I may be able to use my title with the caveat that it indicates my appearance in my personal capacity. This email suggests otherwise. While I'm certainly not appearing in an official capacity, this is part of the mentorship portion of the program of the conference and the topic addresses the subject matter of legal pathway to the bench. So I'm not sure why the organization would not be able to list me with my title and the disclaimer. In your email you indicate that I'm appearing in a "purely personal capacity." I'm not sure if there is a distinction here but I'm requesting to appear in my personal capacity, similar to my previous appearances.

Thank you,
Ashley Tabaddor

From: EOIR, Ethics (EOIR)
Sent: Tuesday, August 28, 2012 1:18 PM
To: Tabaddor, A. Ashley (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: speaking engagement

Hi Ashley,

You have requested ethics advice in connection with a speaking opportunity at the Iranian-American Women's Leadership Conference on Sunday, September 23, 2012. In support of your request, you have submitted the attached form detailing your moderator/speaking role, and provided additional information (below).

You have indicated that you will not receive any compensation for this event, and that you intend to pay the full conference fee. Also, your supervisor, ACIJ Fong, has approved your request to participate in your personal capacity (per his e-mail, also below).

Your speaking request is approved in your personal capacity, subject to the following guidelines:

When speaking in a purely personal capacity, you *cannot* be listed by or with your official title or affiliation. See 5 C.F.R. § 2635.807(b). This general rule provides that if an employee's speaking endeavor is private, it should be disassociated from the employee's position. This avoids the possibility of Governmental sanction of the speech (or the appearance thereof).

Please note, however, that under the circumstances your position with EOIR may be listed in a biographical sketch, along with several other biographical facts, provided that it is no more prominent than any other biographical detail. The ethics rule allowing the listing of your current position only as one of

Several biographical facts permits important information about you to be revealed in a manner that does not suggest Governmental sanction of the speech or the conference.

- Throughout your presentation, you may not create or allow the impression that you are speaking officially, i.e., on behalf of EOIR or the Department of Justice.
- You may not disclose nonpublic information that you acquire in connection with your official duties.

See generally 5 C.F.R. Part 2635, subpart G; 5 C.F.R. § 2635.807(b). In addition, please note the following restrictions applicable to all outside activities:

- The outside activity must not, in any manner, interfere with the proper and effective performance of your official duties and responsibilities;
- The outside activity must not create, nor appear to create, a conflict of interest with your official duties;
- The outside activity must not reflect adversely upon the Department of Justice or the EOIR;
- If matters relating to this outside activity arise in relation to your official duties, you should seek further ethics guidance.

See 5 C.F.R. §§ 2635.702, .704, .705, and .802.

Finally, as a general rule employees may use Government property only for official business or as authorized by the Government. 5 C.F.R. §§ 2635.101(b)(9), 704(a); 28 C.F.R. § 45.4. Department policy provides; however, that you may use the Government office, the library, word processing, and other similar office equipment and facilities on your own time in connection with a personal use, if there is only negligible expense to the Government (such as electricity, ink, small amounts of paper, and ordinary wear and tear). See 28 C.F.R. § 45.4. Under no circumstances may work from this outside activity be assigned to, or be otherwise required of, Government clerical or support staff. 5 C.F.R. § 2635.705(b).

We encourage you to continue to seek ethics advice in the future. If you have any questions about this event or future situations, please feel free to contact me by e-mail or at (703) 605-1280, or submit your question to the EOIR ethics mailbox by using the address book in Outlook.

Thank you.

Charles F. Smith
Associate General Counsel
Executive Office for Immigration Review
(703) 605-1280

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, August 27, 2012 6:20 PM
To: EOIR, Ethics (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: FW: speaking engagement

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Thank you,
Ashley Tabaddor

From: Fong, Thomas (EOIR)
Sent: Monday, August 27, 2012 2:27 PM
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: speaking engagement

ACIJ approval given.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
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Thanks!
Ashley

Tabaddor, A. Ashley (EOIR)

From: Smith, Charles (EOIR)
Sent: Monday, September 10, 2012 8:41 AM
To: Tabaddor, A. Ashley (EOIR)
Cc: Smith, Charles (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: speaking engagement
Attachments: FW: speaking engagement

Good morning, Ashley. I appreciate your well-wishes.

I have received confirmation from ACIJ Fong that he has approved you to speak in your more limited personal capacity at the Iranian-American Women's Leadership Conference on Sunday, September 23, 2012. Thus, to reiterate, you do not have permission to use your title and a disclaimer in this instance (and, although I understand that in a previous engagement last year, before the same audience – see attached – you had been granted permission to speak in your personal capacity, with title and a disclaimer, all speaking requests are considered on a case-by-case basis).

Please note that for Immigration Judges, there are generally three categories of speaking capacity for ethics consideration: (1) official capacity (must be previously approved by OCIJ management; in these instances, an IJ speaks as part of official duties, and is permitted use of title and official time, etc.); (2) personal capacity with title and disclaimer (previously approved by ACIJ; in these instances, speaking is not part of official duties, but subject matter must relate to the IJ's ordinary duties/responsibilities (e.g., teaching a course on asylum law)); and (3) personal capacity (previously approved by ACIJ; subject matter not related to the IJ's ordinary duties/responsibilities, and thus no use of title permitted).

Thus, if the subject matter relates to an IJ's duties/responsibilities, and the responsible ACIJ specifically approves, the IJ can use her official title, provided that she also uses the appropriate disclaimer. By contrast, when an IJ seeks to speak on a subject matter not related to their ordinary duties/responsibilities, and the ACIJ only approves only a personal speaking capacity, the IJ may not use their title with a disclaimer. Again, in this instance, ACIJ Fong's permission extends only to the latter speaking capacity - he has specified that your remarks be made only in your more limited personal capacity, with no permission to use your official title with a disclaimer.

Thank you again for your ethics inquiry.

Charles

From: Tabaddor, A. Ashley (EOIR)
Sent: Tuesday, August 28, 2012 4:56 PM
To: EOIR, Ethics (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: RE: speaking engagement

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Your speaking request is approved in your personal capacity, subject to the following guidelines:

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You may not disclose nonpublic information that you acquire in connection with your official duties.

See generally 5 C.F.R. Part 2635, subpart G; 5 C.F.R. § 2635.807(b). In addition, please note the following restrictions applicable to all outside activities:

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We encourage you to continue to seek ethics advice in the future. If you have any questions about this event or future situations, please feel free to contact me by e-mail or at (703) 605-1280, or submit your question to the EOIR ethics mailbox by using the address book in Outlook.

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Charles F. Smith
Associate General Counsel
Executive Office for Immigration Review
(703) 605-1280

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Cc: Tabaddor, A. Ashley (EOIR)
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Thank you,
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Thomas Y.K. Fong
Assistant Chief Immigration Judge
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Tabaddor, A. Ashley (EOIR)

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Sent: Monday, September 10, 2012 12:14 PM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: speaking engagement
Attachments: FW: speaking engagement; Iranian American WLC speaking engagement 2.wpd

Dear Judge Fong,

I hope you are well. I wanted to reach out to you regarding this upcoming speaking engagement to correct what I believe may have been a miscommunication. When I asked for approval to return to this conference for the second year, it was to return in the same capacity. I think I may have even mentioned that I simply updated the previous form with the new date and minor changes. When I received your approval, there was no indication that you were restricting my appearance beyond what was done last year. If I had known that this was even an issue, I would have made it clear from the beginning that the request was to be in my personal capacity with the use of my title and disclaimer. In fact this has been the case in every speaking engagement I have requested thus far. I actually assumed that the ethics opinion had made an error when I received their approval email with the new instructions. That is why I sent them the previous year's correspondence and approval and sought clarification.

But now the email below indicates that this year you decided that the approval should have this additional restriction. The subject matter remains the same, and it is a topic that is related to my position- which is my pursuit and insight into following a legal education and a path to the bench. This is intended to be both an inspirational talk for the attendees to follow their dreams and to give them practical pointers about the process. While Mr. Smith's email indicates that each request is considered on a case by case basis, I am not aware of what factors have distinguished this case from last year's. If it was my mistake in not making my request clearer from the onset, I apologize.

I ask that you please reconsider your decision on this request.

Thank you,
Ashley Tabaddor

From: Smith, Charles (EOIR)
Sent: Monday, September 10, 2012 8:41 AM
To: Tabaddor, A. Ashley (EOIR)
Cc: Smith, Charles (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: speaking engagement

Good morning, Ashley. I appreciate your well-wishes.

I have received confirmation from ACIJ Fong that he has approved you to speak in your more limited personal capacity at the Iranian-American Women's Leadership Conference on Sunday, September 23, 2012. Thus, to reiterate, you do not have permission to use your title and a disclaimer in this instance (and, although I understand that in a previous engagement last year, before the same audience -- see attached -- you had been granted permission to speak in your personal capacity, with title and a disclaimer, all speaking requests are considered on a case-by-case basis).

Please note that for Immigration Judges, there are generally three categories of speaking capacity for ethics consideration: (1) official capacity (must be previously approved by OCIJ management; in these instances, an IJ speaks as part of official duties, and is permitted use of title and official time, etc.); (2) personal capacity with title and disclaimer (previously approved by ACIJ; in these instances, speaking is not part of official duties, but subject matter must relate to the IJ's ordinary duties/responsibilities (e.g., teaching a course on asylum law)); and (3) personal capacity (previously approved by ACIJ; subject matter not related to the IJ's ordinary duties/responsibilities, and thus no use of title permitted).

Thus, if the subject matter relates to an IJ's duties/responsibilities, and the responsible ACIJ specifically approves, the IJ can use her official title, provided that she also uses the appropriate disclaimer. By contrast, when an IJ seeks to speak on a subject matter not related to their ordinary duties/responsibilities, and the ACIJ only approves only a personal speaking capacity, the IJ may not use their title with a disclaimer. Again, in this instance, ACIJ Fong's permission extends only to the latter speaking capacity - he has specified that your remarks be made only in your more limited personal capacity, with no permission to use your official title with a disclaimer.

Thank you again for your ethics inquiry.

Charles

From: Tabaddor, A. Ashley (EOIR)
Sent: Tuesday, August 28, 2012 4:56 PM
To: EOIR, Ethics (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: RE: speaking engagement

Good afternoon Charles,
I hope you are well. Thank you for the reply. I would like to seek clarification on the use of title provision addressed below. In my past engagements, all of which have been in my personal capacity, it was noted that I may be able to use my title with the caveat that it indicates my appearance in my personal capacity. This email suggests otherwise. While I'm certainly not appearing in an official capacity, this is part of the mentorship portion of the program of the conference and the topic addresses the subject matter of legal pathway to the bench. So I'm not sure why the organization would not be able to list me with my title and the disclaimer. In your email you indicate that I'm appearing in a "purely personal capacity." I'm not sure if there is a distinction here but I'm requesting to appear in my personal capacity, similar to my previous appearances.

Thank you,
Ashley Tabaddor

From: EOIR, Ethics (EOIR)
Sent: Tuesday, August 28, 2012 1:18 PM
To: Tabaddor, A. Ashley (EOIR)

Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: speaking engagement

Hi Ashley,

You have requested ethics advice in connection with a speaking opportunity at the Iranian-American Women's Leadership Conference on Sunday, September 23, 2012. In support of your request, you have submitted the attached form detailing your moderator/speaking role, and provided additional information (below).

You have indicated that you will not receive any compensation for this event, and that you intend to pay the full conference fee. Also, your supervisor, ACIJ Fong, has approved your request to participate in your personal capacity (per his e-mail, also below).

Your speaking request is approved in your personal capacity, subject to the following guidelines:

- When speaking in a purely personal capacity, you *cannot* be listed by or with your official title or affiliation. See 5 C.F.R. § 2635.807(b). This general rule provides that if an employee's speaking endeavor is private, it should be disassociated from the employee's position. This avoids the possibility of Governmental sanction of the speech (or the appearance thereof).

Please note, however, that under the circumstances your position with EOIR may be listed in a biographical sketch, along with several other biographical facts, provided that it is no more prominent than any other biographical detail. The ethics rule allowing the listing of your current position only as one of several biographical facts permits important information about you to be revealed in a manner that does not suggest Governmental sanction of the speech or the conference.

- Throughout your presentation, you may not create or allow the impression that you are speaking officially, i.e., on behalf of EOIR or the Department of Justice.

- You may not disclose nonpublic information that you acquire in connection with your official duties.

See generally 5 C.F.R. Part 2635, subpart G; 5 C.F.R. § 2635.807(b). In addition, please note the following restrictions applicable to all outside activities:

- The outside activity must not, in any manner, interfere with the proper and effective performance of your official duties and responsibilities;
- The outside activity must not create, nor appear to create, a conflict of interest with your official duties;
- The outside activity must not reflect adversely upon the Department of Justice or the EOIR;
- If matters relating to this outside activity arise in relation to your official duties, you should seek further ethics guidance.

See 5 C.F.R. §§ 2635.702, .704, .705, and .802.

Finally, as a general rule employees may use Government property only for official business or as authorized by the Government. 5 C.F.R. §§ 2635.101(b)(9), 704(a); 28 C.F.R. § 45.4. Department policy provides,

however, that you may use the Government office, the library, word processing, and other similar office equipment and facilities on your own time in connection with a personal use, if there is only negligible expense to the Government (such as electricity, ink, small amounts of paper, and ordinary wear and tear). See 28 C.F.R. § 45.4. Under no circumstances may work from this outside activity be assigned to, or be otherwise required of, Government clerical or support staff. 5 C.F.R. § 2635.705(b).

We encourage you to continue to seek ethics advice in the future. If you have any questions about this event or future situations, please feel free to contact me by e-mail or at (703) 605-1280, or submit your question to the EOIR ethics mailbox by using the address book in Outlook.

Thank you.

Charles F. Smith
Associate General Counsel
Executive Office for Immigration Review
(703) 605-1280

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, August 27, 2012 6:20 PM
To: EOIR, Ethics (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: FW: speaking engagement

Good afternoon,

I have been asked to return as a participant in the Iranian American Women's Leadership Conference. ACIJ Fong has already approved my speaking engagement. I have attached the form with the updated information. The only addition is that the session will likely be entitled- "From Law School to the Bench- How to Create Your Own Path to Becoming a Judge." ACIJ Fong has been informed of the proposed title as well. Please let me know if you have any questions.

Thank you,
Ashley Tabaddor

From: Fong, Thomas (EOIR)
Sent: Monday, August 27, 2012 2:27 PM
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: speaking engagement

ACIJ approval given.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, August 27, 2012 12:17 PM
To: Fong, Thomas (EOIR)
Subject: speaking engagement

Hi Tom,

I have been asked to return as a speaker at the 4th Iranian American Women's Leadership Conference. The topic of my conversation is basically the same as last year, except that I will be leading a roundtable discussion during the mentorship phase of the conference rather than part of a panel discussion at a breakout session. I have attached the request form that includes the updated information. Please let me know if you have any questions.

Thanks!

Ashley

Exhibit D

Tabaddor, A. Ashley (EOIR)

From: Frantz, Brigitte (EOIR)
Sent: Wednesday, September 28, 2011 12:50 PM
To: Tabaddor, A. Ashley (EOIR)
Cc: Riley, Crystal (EOIR)
Subject: RE: speaking engagement

Hi Ashley,

Please consider this e-mail OGC's ethics approval of your request to speak at the second annual Iranian-American Women's Leadership Conference on October 23, 2011. You will discuss your personal and professional path in pursuing higher education, a law degree, and becoming a judge. You will not be compensated for this event. There is a \$100 fee to attend the event, and you have indicated that you will pay this general attendance fee. Accordingly, you may accept any meals, refreshments, or materials provided to attendees. There will not be any fund-raising at this event. You will not distribute any personally prepared written materials incident to your speaking engagement. We understand your supervisor, Assistant Chief Immigration Judge Fong, approves your attendance. We grant ethics approval for you to attend in your personal capacity with use of your title and a disclaimer.

As you prepare for the presentation, please remember the following guidelines:

* Be careful not to give legal advice.

* You should refrain from disclosing non-public information. This would include discussing any matters pending before EOIR and discussing hypothetical situations relating to EOIR.

* Since you are not attending in your official capacity, you must provide the appropriate disclaimer at the beginning of your remarks to indicate that the views expressed are your own and not those of EOIR or the Department of Justice. It is very important that you provide this disclaimer, particularly in light of the next item.

* The general rule is that when you are not appearing in your official capacity, you should not use your official title except as part of other biographical information. See 5 C.F.R. 2635.807(b). This rule applies to any announcements, brochures, flyers, etc. related to the event. Under these specific facts, you are permitted to use your official title "Immigration Judge" on written materials associated with this event so long as it is followed immediately by the following parenthetical: "(personal capacity)." **Please coordinate with the sponsor to make certain that this occurs.** You may be introduced with your official title. Please note that ethics permission granting use of your title in your unofficial capacity is specific to this case ONLY; we address this issue on a case by case basis.

* You indicated that you will not hand out any individually prepared materials. If you later decide to distribute materials that you prepare personally, the written materials must contain a printed disclaimer clarifying that they were prepared in your personal capacity, as required by 5 C.F.R. 2635.807(b)(2). An example of an appropriate disclaimer follows: "The author is an Immigration Judge with the X Immigration Court, Executive Office for Immigration Review (EOIR), U.S. Department of Justice. The author prepared this outline in her personal capacity, and the views expressed herein are solely her views and do not necessarily represent the positions of EOIR or the U.S. Department of Justice."

* There are limitations on accepting items of monetary value from prohibited sources, which include organizations comprised of individuals seeking official action from the agency, such as AILA. In addition, you may not accept a gift that is given because of your official position. See 5 C.F.R. 2635.202(a)(2). You are free to accept "modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as a part of a meal." 5 C.F.R. 2635.203(b)(1). Additionally, an applicable exception permits unsolicited gifts with a market value of \$20.00 or less per occasion, not to exceed \$50.00 in a calendar year from a single source. See 5 C.F.R. 2635.204(a).

* Unless your supervisor authorizes administrative leave or an excused absence, you may not use official time or that of another employee even if the employee volunteers to assist you to prepare for this activity.

* The approval of this activity only extends to a determination concerning the ethical guidelines for such activities. Your participation in the requested activity, and any annual or other leave taken, must be approved by your supervisor.

* Except in limited circumstances, (e.g., teaching approved courses) you cannot receive compensation for speaking, teaching, or writing which relates to the agency's mission or to your official capacity.

* I am copying Crystal Riley to make Public Affairs aware of this event.

* Please refer to 5 C.F.R. § 2635.807, as well as 5 C.F.R. §§ 2635.701-705 for general guidelines.

We encourage you to continue to seek ethics advice in the future. If you have any questions about this event or future situations, please feel free to contact me or submit the question to the EOIR ethics mailbox by using the address book in Outlook.

Thanks,
Brigette

Brigette L. Frantz
Associate General Counsel
Ethics Officer
USDOJ/EOIR/OGC
703/605-1281

From: Tabaddor, A. Ashley (EOIR)
Sent: Tuesday, September 27, 2011 3:34 PM
To: Frantz, Brigette (EOIR)
Subject: RE: speaking engagement

Hi Brigette,
Any news? Thanks!

From: Frantz, Brigette (EOIR)
Sent: Tuesday, September 20, 2011 3:25 PM
To: Tabaddor, A. Ashley (EOIR)
Subject: Re: speaking engagement

Will do Ashley.

From: Tabaddor, A. Ashley (EOIR)
Sent: Tuesday, September 20, 2011 02:31 PM
To: Frantz, Brigette (EOIR)
Subject: RE: speaking engagement

Hi Brigette,
I just received an out of office reply from your inbox. I understand you are returning on September 26th. I would appreciate it if you would give this priority consideration once you return, as they have asked me to get back to them asap. Thank you!
Ashley Tabaddor

From: Tabaddor, A. Ashley (EOIR)
Sent: Tuesday, September 20, 2011 11:29 AM
To: Frantz, Brigette (EOIR)
Subject: FW: speaking engagement

Hi Brigette,

I hope you are well. ACIJ Fong has approved this speaking engagement request. I have attached the email correspondence with ACIJ and the form. Please let me know if you have any questions.
Thank you!
Ashley Tabaddor

From: Fong, Thomas (EOIR)
Sent: Tuesday, September 20, 2011 11:25 AM
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: speaking engagement

You have my approval, please clear with Brigitte Frantz (Ethics).

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, September 19, 2011 3:55 PM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: speaking engagement

Hi Tom,

I hope you are well. I have been asked to serve as a panelist during a one day conference at the Iranian-American Women's Leadership Conference. This is their second annual conference. The goal of the conference is to inspire women to reach for their personal and professional goals. I attended their first conference last year which was a huge success. They have amazing people from all different backgrounds share their personal and professional experiences to inspire everyone to follow their dreams and make a positive difference in the community. I have now been asked to join their list of panelists to hopefully do the same for the younger generation. I have attached the request form with the information. For more information and a better sense of the program, please check out their website at

<http://www.cvent.com/events/2011-pathways-to-success-iranian-american-women-s-leadership-conference/event-summary-7d21cd4041ef460986e0f2a307d8f9a2.aspx>

Please let me know if you have any questions. Thanks!
Ashley

Press, Andrew (EOIR)

From: Laboni Hoq <lhoq@apalc.org>
Sent: Friday, November 09, 2012 4:42 PM
To: Press, Andrew (EOIR)
Cc: Tabaddor, A. Ashley (EOIR); Hunt, JuanCarlos (EOIR)
Subject: Re: EEO Documents

Hi Andrew,

Thanks for your response. We agree to extend the EEO counseling period to November 16, 2012. We looking forward to hearing the Agency's response by that time.

Have a good weekend.

Laboni

--
Laboni A. Hoq
Litigation Director

ASIAN PACIFIC AMERICAN LEGAL CENTER
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1145 Wilshire Blvd., 2nd Floor
Los Angeles, CA 90017
(213) 977-7500 x 257
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lhoq@apalc.org
apalc@advancingjustice.org

On Fri, Nov 9, 2012 at 11:35 AM, Press, Andrew (EOIR) <Andrew.Press@usdoj.gov> wrote:

Hello Ms. Hoq

As I stated yesterday, I am continuing to work on this matter. Unfortunately, due to training, Tropical Storm Sandy and vacations by management and EEO staff the EEO office has only had initial communications with management. In addition, as Monday is a Federal holiday the EEO Director, JuanCarlos Hunt thinks it would be beneficial to extend the counseling session by three days to November 16, 2012.

Please let me know if this is agreeable to you and IJ Tabaddor.

Sincerely,

Andrew

From: Laboni Hoq [mailto:lhq@apalc.org]

Sent: Friday, November 09, 2012 1:46 PM

To: Press, Andrew (EOIR)

Cc: Tabaddor, A. Ashley (EOIR)

Subject: Re: EEO Documents

Hi Andrew,

I am following up on the voice mail I left you this morning, as well as my email of yesterday asking whether respondents in this matter intend to respond to Judge Tabaddor's complaint of discrimination. As you know, the deadline to complete counseling is Monday and we have heard no response from you regarding the Agency's position.

We look forward to hearing back from you in this matter.

Thank you,

Laboni

--

Laboni A. Hoq
Litigation Director

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Member of Asian American Center for Advancing Justice

1145 Wilshire Blvd., 2nd Floor
Los Angeles, CA 90017
T (213) 977-7500 x 257
F (213) 977-07595

lhq@apalc.org

apalc@advancingjustice.org

On Thu, Nov 8, 2012 at 10:44 AM, Laboni Hoq <lhq@apalc.org> wrote:

Hi Andrew,

Can you let us know whether you have spoken to the respondents and whether you will have a response to us this week? As I mentioned to you when we spoke several weeks ago, we are eager to move the process along.

Thank you,

Laboni

--
Laboni A. Hoq
ation Director

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F (213) 977-07595

lhq@apalc.org

apalc@advancingjustice.org

On Thu, Nov 8, 2012 at 10:34 AM, Press, Andrew (EOIR) <Andrew.Press@usdoj.gov> wrote:

Good Morning Laboni

I am still in the processing of working on it.

Thank you.

Andrew

From: Laboni Hoq [mailto:lhog@apalc.org]
Sent: Thursday, November 08, 2012 1:04 PM

To: Press, Andrew (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: Re: EEO Documents

Dear Mr. Press,

I am following up on the voice mail I left you this morning. By our account, the deadline to complete counseling is this Monday 11/2, and we have not heard back from you on the Agency's response to Judge Tabaddor's complaint. Can you contact me about this today?

Thank you,

Laboni

--
Laboni A. Hoq
Litigation Director

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Los Angeles, CA 90017
T (213) 977-7500 x 257
F (213) 977-07595

lhoq@apalc.org

apalc@advancingjustice.org

On Thu, Nov 1, 2012 at 5:25 AM, Press, Andrew (EOIR) <Andrew.Press@usdoj.gov> wrote:

Good Morning Ms. Hoq

Thank you.

Andrew

-----Original Message-----

From: Laboni Hoq [<mailto:lhoq@apalc.org>]

Sent: Tuesday, October 23, 2012 2:56 PM

To: Press, Andrew (EOIR)

Cc: Tabaddor, A. Ashley (EOIR)

Subject: Re: EEO Documents

Dear Mr. Press:

As we discussed on Friday October 19, 2012, attached is an updated version of the letter I sent you on October 18, 2012 regarding the claims, bases and remedies asserted in Judge Tabaddor's complaint of discrimination. Please do not hesitate to contact me if you have any questions in this regard.

Thank you,

--

Laboni A. Hoq

Litigation Director

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T [\(213\) 977-7500 x 257](tel:(213)977-7500)

F (213) 977-07595

lhoq@apalc.org

apalc@advancingjustice.org

On Thu, Oct 18, 2012 at 5:12 PM, Laboni Hoq <lhoq@apalc.org> wrote:

> Dear Mr. Press,

> As discussed, attached please find on behalf of my client A. Ashley
> Tabaddor a letter setting for the claims, bases and remedies asserted
> in her complaint of discrimination.

>
> We look forward to speaking to you tomorrow morning at 8 am PST.

>
> Thank you,

>
> --
> Laboni A. Hoq
> Litigation Director

> _____
>
> ASIAN PACIFIC AMERICAN LEGAL CENTER
> Member of Asian American Center for Advancing Justice

>
> 1145 Wilshire Blvd., 2nd Floor
> Los Angeles, CA 90017
> T (213) 977-7500 x 257
> F (213) 977-07595
> lhoq@apalc.org
> apalc@advancingjustice.org

>
>
>
> On Thu, Oct 18, 2012 at 8:26 AM, Press, Andrew (EOIR)

> <Andrew.Press@usdoj.gov> wrote:

>> Good Morning Judge Tabaddor

>>
>>
>>
>> Ok. Thanks.

>>
>>
>>
>> Thanks
>>
>> Andrew

>>
>>
>> From: Tabaddor, A. Ashley (EOIR)
>> Sent: Thursday, October 18, 2012 11:25 AM
> To: Press, Andrew (EOIR)
>> Cc: 'lhoq@apalc.org'
>> Subject: RE: EEO Documents

>>
>>
>>
>>
>>

Hi Andrew,

>> Thank you for the attached documents. I have completed them, and will

>> be faxing them to you this afternoon. Please let me know when you
>> receive them. I have also contacted my attorney regarding some
>> available times for us to have the interview. We are available on
>> Friday, Monday, and Tuesday, October 19th , 22nd and 23rd at 8:00
>> a.m. PST. We are also available on Wednesday, October 24th at 1:00
>> p.m. PST. Please let me know which slot works best for you.

>> Also, per your request, my attorney, whom I have cc'ed in this email,

>> will be forwarding to you a short description of my claim to help you

>> with the process.

>> I look forward to hearing from you,

>>
>>
>>
>>
>> Ashley Tabaddor

>> Immigration Judge

>> Immigration Court

>> Los Angeles, California

>> From: Press, Andrew (EOIR)
>> Sent: Wednesday, October 17, 2012 12:31 PM
>> To: Tabaddor, A. Ashley (EOIR); Press, Andrew (EOIR)
>> Subject: EEO Documents

>> Good Afternoon Judge Tabaddor

>> Per our conversation today, attached are the documents that need to
>> be signed and sent back to the EEO office.

>> Thank you.

>>

>> Andrew

>>

EOIR/OOD/EEO

>> (703) 605-1285

>>

>> (703) 605-0367 fax

>>

>>