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VIA EMAIL (PATRICK.ANDERSON@USDOJ.GOV)  
VIA FEDEX

March 6, 2013

Mr. Patrick Anderson  
EEO Counselor/Investigator  
Office of Equal Employment Opportunity  
United States Marshals Service  
Crystal Square #4, Suite 1102  
2604 Jefferson Davis Highway  
Alexandria, Virginia 22301-1025

**RE: Investigation of Complaint of Judge A. Ashley Tabaddor  
Number EOI-2013-00081**

Dear Mr. Anderson:

We are writing in follow up to our email correspondence of February 26, 2013 that provided an executed copy of Judge Tabaddor's final affidavit with the original to follow by mail. As we indicated would be forthcoming, enclosed please find the original executed affidavit of Judge Tabaddor.

Please feel free to contact us with any questions.

Sincerely,

Allison M. Rego

Enclosure

cc: The Honorable A. Ashley Tabaddor

810519 v1/SD

UNITED STATES MARSHALS SERVICE

AFFIDAVIT

STATE OF CALIFORNIA

CITY OF Los Angeles

I, A. Ashley Tabaddor, 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 me against the U.S. Department of Justice, Executive Office for Immigration Review 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:

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

**ANSWER:**

My full name is Afsaneh Ashley Tabaddor. My job title is Immigration Judge.

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

**ANSWER:**

At the time the complaint was filed I was, and I continue to be, employed by the Department of Justice ("DOJ"), Executive Office of Immigration Review ("EOIR"), Office of the Chief Immigration Judge ("OCIJ"), Immigration Court at 606 South Olive Street, Los Angeles, California, 90014. I have been in my current position since November 2005. In addition to serving as an Immigration Judge with EOIR, I was previously employed as a summer law extern, a judicial law clerk and attorney advisor. Specifically, from July 1999 through September 2000, I was an attorney advisor to the Chief Immigration Judge in Falls Church, Virginia. During the time period between June 1996 and July 1999, I was employed as a summer law extern, judicial law clerk and an attorney advisor with the Immigration Court in Los Angeles.

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

**ANSWER:**

In my current position as an Immigration Judge, my first level supervisor is Thomas Fong, the Assistance Chief Immigration Judge ("ACIJ") for the Los Angeles Immigration Court. I understand that my second level supervisor would be either the Deputy Chief Immigration Judge, Michael McGoings, or the Chief Immigration Judge, Brian O'Leary.

**QUESTION #4:** Specifically, what discriminatory event(s) are you alleging have occurred?

**ANSWER:**

As detailed further below and in my complaint of discrimination, I was ordered to recuse myself from all cases involving individuals from Iran and am subject to a standing order that I not be assigned any cases involving Iranian nationals. This action was taken because of my national origin, race and religion, as well as my association with groups whose members identify with these characteristics. Since the time I protested the recusal order, I have been restricted in my ability to participate in outside activities.

**QUESTION #5:** Who are you alleging was responsible for the discriminatory actions directed against you? Please provide their names and job titles for each person.

**ANSWER:**

To the best of my knowledge, the following individuals were involved in the discriminatory actions against me:

- Thomas Fong, ACIJ, Los Angeles Immigration Court;
- Jeff Rosenblum<sup>1</sup>, General Counsel, Office of the General Counsel (“OGC”), EOIR;
- Charles Smith, Associate General Counsel, OGC, EOIR;
- Nina Elliot, Associate General Counsel, OGC, EOIR;
- Matthew Bradley, Associate General Counsel, OGC, EOIR.

Although discussed more thoroughly in response to Question 6 below and in my complaint, ACIJ Fong participated in the discriminatory actions against me by adopting and implementing the order that I recuse myself from all cases involving individuals from Iran and further, adopting and implementing the standing order that I not be assigned any new cases involving individuals from Iran. ACIJ Fong has also participated in restricting my ability to participate in outside activities since the time I protested the recusal order by adopting the mandates issued by the OGC to that effect. Mr. Rosenblum participated in the discriminatory actions against me by first recommending and then ordering that I recuse myself from all cases involving individuals from Iran. Mr. Smith, Ms. Elliot, and Mr. Bradley participated in the discriminatory actions against me by restricting my ability to participate in outside activities after I protested the recusal order. Based on the circumstances, it would appear (although I do not know for sure) that these individuals were not acting independently and instead, were acting under the direction of others, including Mr. Rosenblum and/or ACIJ Fong.

In addition, I note that Kelly Billingsley, Program Specialist with the OGC, was copied on the correspondence described below between myself and Mr. Rosenblum as well as the later correspondence with Mr. Smith, Ms. Elliot and Mr. Bradley relating to my participation as a speaker at outside activities. Although I am unsure whether Ms. Billingsley was involved in making decisions relating to the discriminatory actions directed against me, she may have relevant information. I also note that on Mr. Rosenblum’s July 5, 2012 email described below he additionally copied Deepali Nadkarni, an Assistant Chief Immigration Judge, and Deputy Chief Immigration Judge McGoings. It is possible, of course, that others whom I am unaware of were involved in making decisions relating to the discriminatory actions taken against me.

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<sup>1</sup> At the time the complaint was filed, Mr. Rosenblum’s position within the OGC was not that of General Counsel. To the best of my knowledge, he was Chief of the EOIR’s Labor Employee Relations office at that time.

**QUESTION #6:** When did the alleged discriminatory event occur? Is the alleged discrimination still going on? Please provide dates and location.

**ANSWER:**

On June 28, 2012, I orally requested time off from ACIJ Fong to attend a roundtable meeting at the White House which involved discussion of federal initiatives relevant to the Iranian-American community. ACIJ Fong indicated that he was not inclined to grant my request for leave, but per our discussion, I made my request in writing with the understanding that I would receive a final decision in writing after consideration by headquarters. When I did not receive a timely response, on Friday June 30, 2012, I emailed Deputy Chief Immigration Judge McGoings with my request noting that time was of the essence. He responded that he was not aware of the request but would follow up on Monday and have someone contact me. I did not receive a dispositive response, and instead, was contacted by Mr. Rosenblum who indicated he had questions regarding my request. During our conversation, Mr. Rosenblum told me that I could attend the roundtable meeting as long as I was not appearing in my official capacity, was not representing any organization, and did not use my title unless specifically asked for the information. I confirmed that I would be appearing in my personal capacity with no intention of appearing on behalf of any organization or using my title. Mr. Rosenblum did not make any mention of recusal or any consequences of attending the roundtable meeting. To the contrary, he indicated that with the caveats noted above, I was cleared to attend the event.

Thereafter, on July 5, 2012, I received an email from Mr. Rosenblum advising that I was approved to participate in the roundtable meeting in my personal capacity. At the same time, Mr. Rosenblum "recommend[ed] that [I] disqualify [myself] from any matter involving individuals from Iran that comes before [me] in my capacity as an Immigration Judge" due to my being "very active in the Iranian-American community" and participating in the roundtable event. [See Complaint, Ex. B.]

On August 20, 2012, I contacted Mr. Rosenblum by email seeking clarification of his recommendation that I recuse myself from cases involving individuals from Iran. I specifically asked Mr. Rosenblum to identify why my activities in the Iranian-American community would create an appearance of impartiality as he had suggested, including whether it is because I am Iranian-American. I further questioned Mr. Rosenblum as to whether I 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 group or religion. In light of the severity of the recommendation, I requested that I be provided with a comprehensive explanation of the reasoning behind it and further, asked that the recommendation be reconsidered.

On August 28, 2012, Mr. Rosenblum responded to my request for clarification by changing his prior "recommendation" to a mandate that I recuse myself from all cases involving respondents from Iran. Specifically, he stated that I "should disqualify [myself] from cases involving

respondents from Iran to avoid any appearance problems, as suggested in [Mr. Rosenblum's] earlier email." [See Complaint, Ex. A.] Despite my request for a detailed explanation, Mr. Rosenblum did not cite any specific reasons why my activities in the Iranian-American community could create an appearance of bias. Even more, the language of the correspondence ordering the recusal itself ultimately indicates recusal is being imposed to "avoid any appearance problems" (as quoted above) rather than expressly making a finding that such problems exist. Rather, citing to 5 C.F.R. § 2635.502(b)(1)(v), his email now included a threat that my participation in outside activities "may have consequences." However, Mr. Rosenblum's citation to 5 C.F.R. § 2635.502(b)(1)(v) on this point does not provide any support for the recusal order. Instead, it requires employees to disqualify themselves from matters involving organizations in which they are active participants. Here, I was not ordered to recuse myself from cases involving specific organizations of which I'm a participant, but rather cases involving an entire nationality. Additionally, Mr. Rosenblum's email failed to address my point that all my previous outside activities were cleared by both my supervisor and the ethics department. It is also noteworthy that the correspondence concedes that "in no way is OGC suggesting that [I] have an actual bias" and so, the recusal order further lacks legitimate support on any such basis. [See Complaint, Ex. A.]

Likewise, although Mr. Rosenblum's email alleged that his office had recommended that Immigration Judges disqualify themselves from a particular class of matters in similar circumstances, he did not identify those other matters or whether they required the Immigration Judge to recuse himself or herself from an entire class of respondents without any actual finding of an appearance of impartiality based on facts. He also did not identify what authority he was relying on to impose mandatory recusals in any such cases.

As such, in a continuing effort to challenge the recusal order as unwarranted, on September 5, 2012, I contacted Mr. Rosenblum to ask who was involved in making the decision to issue the order and to request that it be reconsidered. On September 7, 2012, Mr. Rosenblum confirmed that his recusal order was the official position of OGC and that it was not reviewable by any other entity. The OGC does not operate independently of the EOIR but rather serves as its counsel. It is my understanding, then, that in speaking for the OGC, Mr. Rosenblum was informing me of the official position of the EOIR in issuing the recusal order. Based on my understanding of the chain of command within the EOIR, the decision to issue the recusal order would implicate not only my direct supervisor ACIJ Fong but also the Deputy Chief Immigration Judge, the Chief Immigration Judge and the Director of the EOIR.

On September 10, 2012, I emailed ACIJ Fong stating my understanding that I was now subject to an order to recuse myself from all cases that involve an Iranian national. I again voiced my opposition to the order, including that the order was not consistent with EOIR rules. Later that day, ACIJ Fong confirmed the recusal order. And, based on his instruction, I issued recusal orders in the cases on my docket, at that time, that involved Iranian nationals. Specifically, I issued recusal orders in the eight cases, however, two were consolidated cases, meaning that I

ultimately had to recuse myself from cases involving 11 individuals of whom 10 were from Iran. The recusal order is not an isolated event, to be sure, as it has continuing effect. Not only was I required to recuse myself from pending cases involving Iranian nationals, but I am subject to an open-ended standing order that I not be assigned any cases involving Iranian nationals, in a continuing act of discrimination. To the latter point, ACIJ Fong verbally confirmed to me that the persons responsible for overseeing case assignments to Immigration Judges were put on notice not to assign me any new cases involving Iranian nationals. I do not know how many cases have not been assigned to me that otherwise would have been since the EOIR implemented the recusal order.

In addition to the recusal order, directly after I protested Mr. Rosenblum's recusal recommendation on August 20, 2012, I was subject to further adverse treatment. On August 27, 2012, I made a request to speak at the Iranian American Women's Leadership Conference (the "Conference"). I had participated as a speaker at this same event in 2011 and received approval to attend in my personal capacity with use of official title so long as an appropriate disclaimer was given to make clear I was speaking solely in my personal capacity. [See Complaint, Ex. D.] In response to my August 27, 2012 request to participate at the same event in the same capacity, however, Charles Smith and ACIJ Fong denied my ability to speak at the Conference in my personal capacity with use of title and a disclaimer. [See Complaint, Ex. C.] On August 28, 2012, I emailed Mr. Smith asking why they were restricting on my attendance at the Conference and further pointing out that this action was unprecedented in my experience. In response, on September 10, 2012, Mr. Smith reiterated (as confirmed by ACIJ Fong) that I could not be listed by or with my official title or affiliation at the Conference. That same day, I requested that ACIJ Fong reconsider this decision, but he never replied to my request.

This conduct supports my claim of reprisal discrimination which is further supported by an additional incidents of adverse treatment occurring shortly after the time I filed my complaint. On November 28, 2012, I requested permission from ACIJ Fong to return as a speaker at the 5th Annual International Business Women Trade Show (the "Trade Show") schedule for March 2013. I had spoken at this same event in March 2012, with approval from ACIJ Fong and the OGC, and had been permitted to use my title in connection with the event so long as an appropriate disclaimer was included. On November 29, 2012, ACIJ Fong approved my participation as a speaker. In line with EOIR protocol, I then forwarded my request and ACIJ Fong's approval to the OGC for approval. In this instance, not only was there an unusual delay in receiving a response from the OGC, but ultimately, on December 7, 2012, I received an email from Nina Elliot denying my ability to speak at the Trade Show with use of my title and a disclaimer, which was in direct conflict with ACIJ Fong's approval of my request to use my title with a disclaimer. On December 14, 2012, I wrote Ms. Elliot explaining that I could not understand what distinguished my present request from that of last year where I was not restricted in use of my title with a disclaimer. I further pointed out that under the circumstances, this conduct effectively prevented me from participating as a speaker at the event. On December

17, 2012, Ms. Elliot responded, confirming that use of my title would be restricted. True and complete copies of this email correspondence is attached as **Exhibit 1**. Additionally, true and correct copies of the email correspondence relevant to my participation as a speaker at the Trade Show in March 2012 is attached as **Exhibit 2**.

In similar fashion, on December 26, 2012, I requested permission to speak at a diversity day event at the Brentwood School, a local K-12 school, scheduled for February 13, 2013. As explained in my request form, I was seeking approval to speak as a panelist in a session on the changing role of women, with the goal being to present panelists from different professions who will speak about their personal and professional background as well as observations about the changing role of women. As with the Conference and Trade Show, I received approval from ACIJ Fong, but was again restricted in the use of my title with a disclaimer by the OGC, as communicated by Associate General Counsel Matthew Bradley. I have received approval to speak on this same topic with other organizations in the past with use of my title and a disclaimer, but now am being prohibited from doing so. A true and correct copy the email correspondence relevant to my participation as a speaker at the Brentwood School is attached as **Exhibit 3**.

### **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 #7:** Why do you believe the alleged discrimination action(s) is directed at you? Why do you believe the alleged discriminatory action(s) occurred because of your national origin?

### **ANSWER:**

As noted in my complaint, I am an Iranian-American and more specifically, as stated in the forms relating to my employment by the EOIR, I was born in Tehran, Iran. I believe the recusal recommendation and order were directed at me because of my national origin, race and religious association. The only reason given for the EOIR's action was my association with the Iranian-American community. As I pointed out in my correspondence with Mr. Rosenblum, I know of other Immigration Judges who have been active in ethnic, religious and other communities but am not aware of any having been subject to blanket recusal orders like that recommended and later ordered of me. At the same time, I am active in a number of community organizations of different demographic groups and have never been ordered to wholesale recuse myself from cases involving individuals from any other groups. Further, a blanket and perpetual recusal order of the kind imposed on me is not in accord with agency guidance or other authorities addressing the recusal of Immigration Judges which, among other things, contemplate recusal decisions made by an Immigration Judge to be on a case-by-case basis. There is no claim of actual bias on my part, no complaints by any individual who has appeared before in my capacity as an



Immigration Judge, and in my over seven years on the bench, I have always complied with or exceeded EOIR guidelines relating to approval for participation in outside volunteer and professional activities without any issue. More broadly, I have never been subject to any discipline in my capacity as an Immigration Judge and my employment record with the EOIR supports my positive performance in my current position.

**QUESTION #8:** How did the alleged discriminatory action(s) negatively affected your terms and conditions of employment with the agency? How has your job been affected? If so how? Be specific.

**ANSWER:**

The recusal recommendation and standing order have materially and adversely affected the terms, privilege and conditions of my employment. I have been segregated from comparable employees of the EOIR in being held to different recusal and disqualification standards than other Immigration Judges. The recusal order operates to prevent me from fully exercising my authority and duty as an Immigration Judge to use my independent judgment to objectively determine whether to recuse myself from cases as required by applicable authority. And, due to the continuing nature of the recusal order, I am further segregated from other Immigration Judges in what is otherwise a system of random case assignments. The restriction on my official duties caused by the recusal order has raised a suggestion of wrongful conduct on my part without any basis, resulting in reputational harm, and has otherwise imposed an undeserved stigma on my legitimate and proper outside activities, which nonetheless have always been undertaken with appropriate EOIR approval.

**QUESTION #9:** What is the national origin of the management official responsible for the alleged discriminatory action(s) directed against you?

**ANSWER:**

I do not have knowledge to state with certainty the national origin of the management officials responsible for the discriminatory actions described in this affidavit and my complaint.

**QUESTION #10:** What action did you take in response to the alleged discriminatory action(s)? Please be specific.

**ANSWER:**

As detailed above in response to Question 6, I protested the recusal recommendation and order directly to Mr. Rosenblum and ACIJ Fong at the time these actions were taken against me. My correspondence to them was no only to oppose the recusal order and point out that it is without any legitimate basis, but also to ask that they reconsider their actions. These attempts, however, proved fruitless, and instead, I was told simply that I was being ordered to recuse myself from all cases involving Iranian nationals due to my association with the Iranian-American community.

Additionally, I am a member of the National Association of Immigration Judges (“NAIJ”), the union for Immigration Judges. In October 2012, the president and vice president of NAIJ met with Mr. Rosenblum and raised the issue of the recusal order against me. Although I was not present at the meeting, it is my understanding that Mr. Rosenblum did not offer any further justification for the unprecedented order and did not convey any willingness to reconsider his position. Without any ability to redress the action against me with those directly responsible, I contacted the appropriate EEO office to report the discrimination. Thereafter, I participated in a counseling interview with an EEO Counselor and ultimately proceeded to filing a formal complaint.

**QUESTION #11:** What was management’s response to your discontent with the alleged discriminatory action(s) directed against you?

**ANSWER:**

As discussed above, I did not receive any meaningful response to my protestation of the recusal recommendation and order. It was simply reiterated to me that management would not reconsider its decision and that there was nothing I could do to seek reconsideration of the recusal order.

**QUESTION #12:** Did anyone witness the alleged discriminatory action(s)? If so, who and what specifically did each person(s) witness? Please provide dates for each incident witnessed.

**ANSWER:**

The EOIR’s actions in ordering my recusal from all cases involving individuals from Iran predominantly occurred through email correspondence which I previously submitted as Exhibits A and B to my complaint. Other than those included on the correspondence, to my knowledge, there were no additional witnesses. However, as noted above, it is possible that others who I am unaware of were involved in deciding to issue the recusal recommendation and order.

**QUESTION #13:** Did you inform anyone about the alleged discriminatory action(s)? If so, who did you tell? What response did you receive from them?

**ANSWER:**

As discussed above, I protested the recusal recommendation and order to both Mr. Rosenblum and ACIJ Fong directly but did not receive any response with a legitimate basis for EOIR’s actions and was told that the recusal recommendation and order would not be reconsidered. In addition, I discussed the matter with officers of the NAIJ who in turn met with Mr. Rosenblum to discuss the matter. This effort was met with similar results.

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**QUESTION #14:** Has any other employee been subjected to the alleged discriminatory action(s) or has anyone else complained about a similar incident as yours?

**ANSWER:**

To the best of my knowledge, no other Immigration Judge has been subject to a standing, blanket recusal order from an entire class of case assignments based on their activities within a certain ethnic, race-based or religious community. For instance, as expressed in my complaint and in my correspondence with Mr. Rosenblum, there are certainly Immigration Judges who are active in their respective churches, but I am unaware of any being ordered to recuse themselves from all cases involving individuals of the same religion or even cases where individuals are seeking asylum based on persecution for being of that particular religion. Similarly, by the mandatory recusal ordered of me, an Immigration Judge who is known by the public and the parties to be Jewish and to be actively involved in organizations like the Anti-Defamation League would be required to recuse himself from cases involving people of Jewish ethnicity or religion. To the best of my knowledge, no mandatory recusal order has been issued in such a case. Further, as raised to Mr. Rosenblum, I question whether the same standard would apply to an openly gay or lesbian Immigration Judge who hears claims of asylum based on sexual orientation. Likewise, it is difficult to imagine (and I have never heard of) an Immigration Judge who is African American, and involved in the African American community being prohibited from all cases with respondents from Africa.

**QUESTION #15:** Do you have any documentation to support your claim of discrimination? If so, please provide copies for the record.

**ANSWER:**

Documentation relating to the recusal recommendation and order was submitted with my complaint as Exhibits A and B. Documentation relating to the actions restricting my ability to participate in outside activities after protesting the recusal recommendation and order as discriminatory were submitted as Exhibits C and D to my complaint and Exhibits 1 through 3 to this affidavit.

**QUESTION #16:** Did you complain or make known your rejection of the alleged discriminatory action(s)? Who did you tell, when, what did you tell the person?

**ANSWER:**

Yes. As detailed above in response to Questions 6 and 10, I made known my rejection of the recusal recommendation and order to both Mr. Rosenblum and ACIJ Fong (as well as Ms. Billingsley who was copied on correspondence on this matter), who were directly involved in implementing the recusal action.

**QUESTION #17:** Are you aware of the agency's anti-discrimination policy? How did you become aware? Did you complain pursuant to the policy?

**ANSWER:**

As an officer with the NAIJ, I am aware that the EOIR is prohibited from discriminating against its employees under the law, as a matter of policy and by contract with the Immigration Judges. Additionally, as an employee of the DOJ, I periodically receive email correspondence from the Attorney General's office expressing the Department's commitment to a discrimination free environment.

**QUESTION #18:** What happened as a result of your complaint? Did the alleged discriminatory action(s) stop?

**ANSWER:**

The discriminatory actions described in my complaint remains ongoing, as detailed above, particularly in response to Questions 6 and 10.

**QUESTION #19:** What steps did you take to ensure you were not harmed any further by the alleged responsible management official?

**ANSWER:**

I opposed the recusal recommendation and order as described above. After having been told unequivocally that there was no ability for me to seek reconsideration of the EOIR's actions, I ultimately proceeded by reporting the discrimination to the EEO.

**Race:**

**Race discrimination** involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion.

**QUESTION #20:** At the time of the alleged discriminatory event which is the basis of this complaint, was management aware of your race? What factors lead you to believe they had prior knowledge of your race?

**ANSWER:**

At the time of the recusal recommendation and order, I believe my race was known broadly throughout the EOIR. I have, for example, exchanged email correspondence in the past with ACIJ Fong wherein he has expressly acknowledged my being Persian. [See **Exhibit 4** hereto.] During my investiture (swearing in ceremony), which included ACIJ Fong and other Immigration Judges, I shared my personal history of being a refugee from Iran. It is also widely known that I speak Farsi in addition to English. Moreover, during our past holiday party events,

I was part of a group of Persian employees who showcased items, songs and dance from Persian New Year before the Immigration Judges and Immigration Court staff in Los Angeles.

**QUESTION #21:** To your knowledge, what is the race of the responsible management official(s)? How and when did you become aware of his/her race?

**ANSWER:**

As with national origin in answer to Question 9 above, I do not have knowledge to state with certainty the race of the responsible management officials.

**QUESTION #22:** What is your race and why do you believe the alleged discriminatory action(s) directed towards you were based on your race?

**ANSWER:**

My race is Asian, Middle Eastern and Persian. As detailed in answer to Question 7, I am not aware of, and have not been advised of, any other Immigration Judge being subject to a recusal order of the type imposed on me based on their activities within a particular ethnic, race-based or religious community. Such action is unprecedented as far as I know and is not in accord with applicable EOIR policy or other relevant authorities.

### **Religion**

**Religious discrimination** involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs

**QUESTION #23:** At the time of the alleged discriminatory event which is the basis of this complaint, was management aware of your religious beliefs? What factors lead you to believe they had prior knowledge of your religion?

**ANSWER:**

I believe management was aware of my association with the Muslim religion based on the common knowledge of my being an Iranian-American.

**QUESTION #24:** To your knowledge, what religion is the responsible management official(s)? How and when did you become aware of his/her religion?

**ANSWER:**

I do not have knowledge to state with certainty the religion of the responsible management officials, with the exception of ACIJ Fong who is widely known to be a devout Mormon.

**QUESTION #25:** What is your religion and why do you believe the alleged discriminatory action(s) directed towards you were based on your religion?

**ANSWER:**

I am culturally Muslim. As detailed throughout this affidavit, the actions directed towards me with respect to recusal are without any legitimate basis and to the extent explained by EOIR, are expressly based on my association with the Iranian-American community. One aspect of the Iranian-American community is association with the Muslim religion. Indeed, approximately 98% of the population of Iran is Muslim. I believe that the EOIR's proffered explanation for its actions with respect to my recusal were motivated by not only my national origin and race but also, my religion.

**QUESTION #26:** Do you have any documentation to support your claim that alleged discriminatory action(s) occurred based on your religion? Please provide a copy for the record.

**ANSWER:**

I have no additional documentation beyond that described in answer to Question 15.

**QUESTION #27:** Why do you believe the specific responsible management official named was motivated to subject you to religious discrimination?

**ANSWER:**

Because there is a substantial overlap between Iranian nationality and the Muslim religion, as noted above, when taken together with the fact that I have been singled out for adverse treatment among all Immigration Judges without any legitimate basis, I believe that my religion was a motivating reason.

### *Reprisal*

*Reprisal discrimination makes it illegal to fire, demote, harass, or otherwise "retaliate" against people (applicants or employees) because they filed a charge of discrimination, because they complained to their employer or other covered entity about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).*

**QUESTION #28:** What protected activity are you claiming as the basis for your claim of reprisal discrimination? What is the date of the original protected activity?

**ANSWER:**

The protected activity that forms the basis of my claim for reprisal discrimination is my protesting of the recusal recommendation and order and subsequent pursuit of relief through the

EEO. I first protested my recusal on August 20, 2012 as described above (and attached as Exhibit A to my complaint) and since have continued to do so. In my August 20, 2012 correspondence with Mr. Rosenblum, I specifically questioned the basis for my recusal including whether it was because I am Iranian-American. I again opposed my recusal by email correspondence on September 5, 2012 and September 10, 2012 as detailed above.

**QUESTION #29:** Was the responsible management official aware of your protected activity prior to your filing this complaint? How did management learn of your protected activity?

**ANSWER:**

Yes. I protested the recommendation and order of recusal to the individuals who were responsible for directing those actions toward me, including my immediate supervisor ACIJ Fong. They were all contacted by email, copies of which are attached to my complaint.

**QUESTION #30:** What facts led you to believe that the responsible management official was aware of your protected activity?

**ANSWER:**

I know they were aware of my opposition to the recusal order and recommendation because I exchanged written correspondence with ACIJ Fong and Mr. Rosenblum on this matter.

**QUESTION #31:** What action(s) has management taken against you for voicing your opposition to the to the opinion document?

**ANSWER:**

As detailed in response to Question 6 above, within days of opposing my recusal on August 20, 2012, I was held to a much more restrictive standard in my ability to engage in outside activities. Both the Conference and the Trade Show discussed above are events I was approved to participate at as a speaker in 2011 and early 2012, without restriction on use of my title with appropriate disclaimer. However, after opposing my recusal, I was not allowed to participate in the very same activities with use of my title and a disclaimer. Similarly, I was held to more restrictive standard in my ability to participate as a speaker at the upcoming diversity day event at the Brentwood School. I am not aware of any such new restrictions being imposed on other Immigration Judges with respect to involvement in outside activities. This action is particularly detrimental both as a matter of professional development and personal grief as I have always been dedicated to public service and have taken great pride in my civic engagement. I participate in a range of outside activities in my personal capacity, including speaking at or otherwise participating in events not only organized by Iranian-American and Muslim groups, but also events organized by other organizations, including the Los Angeles County Bar Association, Orange County Bar Association, the Pacific Council on International Policy, and academic institutions including my *alma matter* the University of California at Los Angeles, and University of California, Hastings School of Law. Such outside volunteer and professional activities are encouraged of Immigration Judges and pursued by most, if not all, of my colleagues.

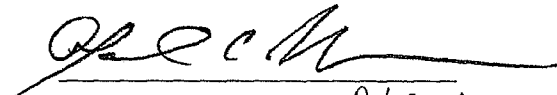
**QUESTION #32:** Do you have anything else to add?

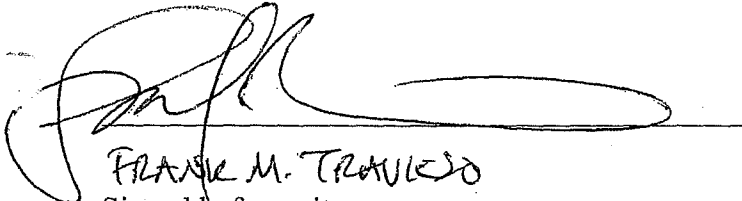
**ANSWER:**



OATH

I have read the above statement consisting of 16 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.

  
2/26/2013  
(Affiant's Signature and date)

  
FRANK M. TRAVISO  
Signed before witness

ON THIS 26th DAY OF February, 2013

**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); McGoings, 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

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**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 18<sup>th</sup>, 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

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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 6<sup>th</sup> 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 18<sup>th</sup>.

Sincerely,

Paul

D. Paul Monteiro

Associate Director | White House Office of Public Engagement

202.456.4753

**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

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**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 schedule before me is on October 14, 2012. Thus, any guidance before that time would be greatly appreciated.

Thank you,

Ashley Tabaddor

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**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

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**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

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**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

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**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