

AFFIDAVIT

STATE OF VIRGINIA

CITY OF Fairfax

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

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

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

I hereby solemnly swear or affirm:

National Origin

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

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

ANSWER:

Jeffrey Adam Rosenblum, General Counsel, Executive Office for Immigration Review (EOIR).

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:

I have been with EOIR, in Falls Church, Virginia, since May 2010. From May 2010 to December 2012, I was the Chief Counsel of the Employee/Labor Relations (ELR) Unit in the Office of the General Counsel. In December 2012 I became the General Counsel.

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

ANSWER:

In November 2012, my first-line supervisor was Acting General Counsel Jean King, and my second-line supervisor was EOIR Director Juan Osuna.

QUESTION #4: What is your National Origin?

ANSWER:

I am from the United States.

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

ANSWER:

To my knowledge Ms. Tabaddor is Iranian. I did not know that definitively until this complaint was filed.

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

ANSWER:

Not to my knowledge.

QUESTION #7: On July 5, 2012, did you send an email to Judge Tabaddor recommending that she disqualify herself from matters involving individuals from Iran due to her activity in the Iranian American community? If so, why was this request made?

ANSWER:

In February 2012, when EOIR's ethics officer (Brigette Frantz) went on detail, the responsibility of providing ethics advice to EOIR employees was transferred to the ELR Unit, which I supervised. At that point, ethics opinions and decisions, such as requests for approval to engage in speaking engagements, were submitted to the ELR Unit, and an ELR attorney (either myself or someone else) would provide an opinion or approval.

Based on e-mails in my possession (provided as part of this investigation), on June 28, 2012, Ms. Tabaddor requested approval to attend a "Roundtable with Iranian-American Community Leaders" at the White House. That day, Assistant Chief Immigration Judge (ACIJ) Tom Fong forwarded Ms. Tabaddor's request to me and managers in the Office of the Chief Immigration Judge (OCIJ). ACIJ Fong recommended against approving the request. I had several follow-up conversations with OCIJ managers – I believe ACIJ Fong, and perhaps Deputy Chief Immigration Judge Mike McGoings and ACIJ Ed Kelly.

I also got in touch with and spoke with Ms. Tabaddor by telephone about the issue. I recall that my immediate concern was the potential violation of a federal statute – 18 U.S.C. § 205 – which prohibits federal employees from representing third parties before the federal government. I was concerned that Ms. Tabaddor would be representing an organization at the White House event, and would thus be prohibited by section 205 from attending a meeting on the organization's behalf. When I spoke with Ms. Tabaddor, I recall that she really wanted to attend this event, and I wanted to make sure that she was able to do so, without violating any ethics rules. Once she confirmed that she would be attending individually, and not on behalf of an organization, I believe that I told her that I thought she would be able to attend (which was ultimately what I told both OCIJ and her).

Prior to issuing my opinion approving Ms. Tabaddor's outside activity, it occurred to me that because Ms. Tabaddor had held herself out to be "very active in the Iranian-American community," to such extent that she received an invitation from the White House to attend this event, she might have an appearance problem in relation to hearing cases involving individuals from Iran. Specifically, under the general impartiality provisions in the ethics regulations (5 C.F.R. Part 2635, Subpart E), employees should not participate in matters in which "the circumstances would cause a reasonable person with knowledge of the relevant facts to question

[the employee's] impartiality in the matter." 5 C.F.R. §§ 2635.502(a)(1)-(2). My concern was that based on Ms. Tabaddor's high-profile activities, a reasonable person could question her impartiality in cases involving individuals from Iran.

Based on my concerns, I consulted with others in the office, including attorneys Rena Scheinkman and Marlene Wahowiak. I recall particularly Ms. Wahowiak's response, as she had worked in the field of ethics (albeit a different area, in the Department's Office of Professional Responsibility) for many years. Ms. Wahowiak had looked up Ms. Tabaddor on Google, and based on the results, Ms. Wahowiak agreed that Ms. Tabaddor's activities could cause a reasonable person to question her impartiality in cases involving individuals from Iran. Prior to issuing my opinion, I also called the Departmental Ethics Office (DEO), and spoke with my contact there, Kathy Silbaugh, who agreed with the recommendation that Ms. Tabaddor disqualify herself from those cases. I believe I also spoke with EOIR's ethics officer, Brigitte Frantz, who was on detail at the time, who also agreed with the recommendation.

It is important to note that as ethics advisors, we have two distinct functions – to approve certain requests, such as participation in outside activities/employment (*see* 5 C.F.R. § 3801.106(c), the Department of Justice's supplemental ethics regulations), and to provide advice as to whether a proposed activity would violate any ethics rules. With respect to Ms. Tabaddor's request to attend the White House event, I approved that request. The recommendation to disqualify herself from matters involving individuals from Iran was not an order (nor did I believe I had the authority to order Ms. Tabaddor to disqualify herself from matters); rather, it was a recommendation that based on the particular facts at issue, it was our opinion that were she to continue participating in such matters in her official capacity, based on her high-profile outside activities, she would likely violate the ethics rules.

QUESTION #8: On August 28, 2012, in your response to Judge Tabaddor, did you mandate that she recuse herself from all cases involving respondents from Iran as she alleges? If so, why was the order given?

ANSWER:

As stated above, I did not have the authority to mandate that Ms. Tabaddor recuse herself from cases. Rather, in my August 28 e-mail, I confirmed my recommendation from my July 5 e-mail. Specifically, I stated: "[I]t *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." (Emphasis added.) I closed my e-mail by stating that "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." (Emphasis added.)

I note that in my role as an ethics advisor, it was my job to analyze the ethics rules and provide my recommendations. *See, e.g.*, 5 C.F.R. § 2635.107(a) ("The designated agency ethics official has authority . . . to delegate certain responsibilities, including that of providing ethics counseling regarding the application of this part . . .").

QUESTION #9: What regulation did you follow or what guidance did you receive prior to making this determination? Who provided the guidance? If from a policy, please provide a copy.

ANSWER:

See responses to questions 8 and 9 above.

Judge Tabaddor alleges that on September 7, 2012, you confirmed the recusal order was the official position of the Office of General Counsel (OGC) and was reviewable by any other entity.

QUESTION #10: Did you make aforementioned statement to Judge Tabaddor as she alleges? If so, who are you referring to as OGC. Please provide name and national origin of OGC member.

ANSWER:

The entire text of my September 7, 2012 e-mail to Ms. Tabaddor is as follows:

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

By "OGC," I was referring to the Office of the General Counsel. The individuals with whom I consulted in this matter are referenced in my response to question 7, above.

QUESTION #11: Does OGC have the final say on matters of this nature or are they reviewable by the EOIR Director?

ANSWER:

There is no formal mechanism to seek review of an ethics opinion by the Director of EOIR. I am unaware of any instance in which the Director has required or recommended that an ethics opinion be changed.

QUESTION #12: Based upon the recusal order, to your knowledge, how many of Judge Tabaddor's cases were reassigned to other judges? Did Judge Tabaddor object to the cases being reassigned?

ANSWER:

I am unaware that Ms. Tabaddor received a "recusal order." I am also unaware as to whether any of Ms. Tabaddor's cases were reassigned.

QUESTION #13: Prior to these events, have you had any conversations with Judge Tabaddor about her social or political affiliations and there possible effect on her position as an Immigration Judge?

ANSWER:

Not that I recall. To the best of my recollection Ms. Tabaddor and I have spoken twice. The first time was in March 2012, when I was visiting the Los Angeles Immigration Court, I stopped by Ms. Tabaddor's office to introduce myself, as we had communicated by e-mail in relation to previous ethics requests. We discussed our backgrounds for 5 to 15 minutes in a friendly conversation. The second time we talked was referenced in my response to question 7 above, in which I was trying to ensure that her request to attend the event at the White House was able to be approved.

QUESTION #14: To your knowledge, has Judge Tabaddor's work or personal association with members of the Iranian American community negatively affected her professional standing with the Agency? If so, please explain how?

ANSWER:

I do not know.

QUESTION #15: Do you have any documentation support your decision to have Judge Tabaddor recused from cases involving Iranian American citizens? If so, please provide a copy for the record?

ANSWER:

As noted above, it was not a decision but a recommendation. I have submitted the documents that I have related to this issue.

QUESTION #16: Are you aware of the agency's anti-discrimination policy? Was Judge Tabaddor ordered to recuse herself from cases involving Iranian Americans based solely on her National Origin (Iranian)?

ANSWER:

I am aware of the agency's anti-discrimination policy.

The recommendation for Judge Tabaddor to disqualify herself was based entirely on her activities, and was in no way related to her national origin. For instance, if Ms. Tabaddor had participated in high-profile activities, including appearing at an event at the White House, on behalf of individuals from another country, I would have recommended the same disqualification, regardless of which country it was. (For example, if Ms. Tabaddor had engaged in the same activities on behalf of Turkish-Americans, I would have recommended that she disqualify herself from cases involving individuals from Turkey.) Similarly, I would have recommended that Ms. Tabaddor disqualify herself from matters involving individuals from Iran *regardless of her own country of origin*, because the appearance issue, in my judgment, arose from her activities, not her country of origin.

QUESTION #17: In the past 2 years, how many requests for personal speaking engagements has Judge Tabaddor made? Of those requested, how many have been denied?

ANSWER:

I do not know how many requests Ms. Tabaddor has made. To my knowledge, no speaking request that she has made has ever been denied.

QUESTION #18: In the past 2 years, how many requests for personal speaking engagements has Judge Tabaddor been allowed to use her official title? To your knowledge, how many times has Judge Tabaddor been informed that she could not use her official title during these engagements?

ANSWER:

I do not know how many requests she has made to use her official title, or how many times she has been informed that she could not use her official title.

In relation to this question, when the ethics function came under my supervision in February 2012, I trained my staff (i.e., the ELR Unit) on the ethics rules. I explained that generally, employees can be approved to speak at events "officially" (i.e., on behalf of the government/agency) or personally, in events that do not relate to their official work. Immigration Judges also have a special third status, approved by the Department prior to the ethics function being under my supervision. This status is called "personal with title and disclaimer." This allows Immigration Judges to speak personally about an issue relating to their work, but without requiring the agency to approve them speaking "officially." I explained these three capacities in an e-mail to an Immigration Judge on July 25, 2012, which I have submitted as part of this investigation.

Notably, what capacity an Immigration Judge speaks in is a matter decided by the Office of the Chief Immigration Judge, not the Office of the General Counsel.

One of the attorneys under my supervision, Charles Smith, noted that Immigration Judges were being approved to speak "personally with title and disclaimer," even though the subject matter did not relate to any official responsibilities. We agreed that this was inappropriate, and that Immigration Judges should not be permitted to use their official titles when speaking purely about a matter unrelated to their duties. When Mr. Smith and I discussed this, I told him that ultimately the decision about what capacity to speak in was for the requesting employee's supervisor.

On April 12, 2012, well prior to any of the events that relate to this complaint, Mr. Smith approved Ms. Tabaddor's request to speak at the Spring Conference of the Pacific Counsel on International Policy. In that e-mail, Mr. Smith noted that "your supervisor, ACIJ Fong, has approved your request to participate in your personal capacity (I telephoned ACIJ Fong to clarify that he had only approved your personal capacity participation as a speaker)." Mr. Smith went on to note that: "When speaking in a purely personal capacity, you *cannot* be listed by or with your official title or affiliation." (Emphasis in original.)

In other words, Ms. Tabaddor was informed that she could not use her official title in relation to purely personal-capacity speaking events in April 2012, approximately three months prior to the matters at issue in this case.

QUESTION #19: Has Judge Tabaddor's requests to use her official title been denied based on her National Origin (Iranian American)?

ANSWER:

No. See response to question 18 above.

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: What is your race?

ANSWER:

Caucasian.

QUESTION #21: To your knowledge, what is Judge Tabaddor's race? When and how did you become aware of her race?

ANSWER:

I do not know her race.

QUESTION #22: Have other staff members been required to recuse themselves from cases involving members of their prospective race? If so, who are they and what is their race? When did this action take place?

ANSWER:

Not to my knowledge.

QUESTION #23: Was Judge Tabaddor ordered to recuse herself from cases involving Iranian Americans based solely on her race (Iranian American)?

ANSWER:

No. It was recommended that Ms. Tabaddor disqualify herself from cases involving Iranian Americans solely because of her high-profile, outside activities. See response to questions 7 and 16, above.

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 #24: For the record, what is your religion?

ANSWER:

I am Jewish.

QUESTION #25: To your knowledge, what is Judge Tabaddor's religion?

ANSWER:

I do not know.

QUESTION #26: At the time of the alleged discriminatory event, which is the basis of this complaint, were you aware of Judge Tabaddor's religious beliefs?

ANSWER:

No.

QUESTION #27: Did Judge Tabaddor's religious belief factor into any decisions or recommendations made by you with regard to her personal appearance requests?

ANSWER:

No. It was recommended that Ms. Tabaddor disqualify herself from cases involving Iranian Americans solely because of her high-profile, outside activities. See response to questions 7 and 16, above.

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: For the record, do you have any prior EEO activity or have you express concerns to management regarding personnel policies of procedures?

ANSWER:

No.

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

ANSWER:

At a meeting with representatives from the National Association with Immigration Judges (NAIJ), the representatives expressed opposition to my recommendation. Also, in an e-mail dated August 20, 2012, Ms. Tabaddor stated: "I am not trying to be difficult, but this 'recommendation' deeply concerns me."

QUESTION #30: Also, did Judge Tabaddor's opposition to the recusal factor into any decisions or recommendations made by you with regards to her personal appearance requests?

ANSWER:

No. In particular, see response to question 18, above.

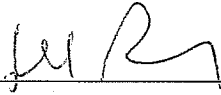
QUESTION #31: Do you have anything else to add?

ANSWER:

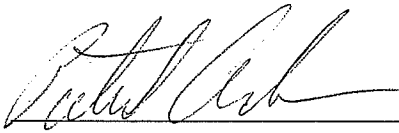
No.

OATH

I have read the above statement consisting of 11 pages, including this page. I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that my statement is true, correct, and complete to the best of my knowledge, information and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to individuals with a right to know.



(Affiant's Signature and date)

 EEO investigator

Signed before witness

ON THIS 11th DAY OF March, 2013

From: Rosenblum, Jeff (EOIR)
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

From: Rosenblum, Jeff (EOIR)
Sent: Thursday, July 05, 2012 3:52 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

Exhibit 8.1 Page 4

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

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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

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From: Tabaddor, A. Ashley (EOIR)
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

From: Ashley Tabaddor
To: Rosenblum, Jeff (EOIR)
Cc: Tabaddor, A. Ashley (EOIR); Fong, Thomas (EOIR); Nadkarni, Deepali (EOIR); McGoings, Michael (EOIR); Billingsley, Kelly (EOIR)
Subject: Re: Outside Activity
Date: Friday, July 06, 2012 1:09:45 AM

Thank you!

On Thu, Jul 5, 2012 at 3:51 PM, Rosenblum, Jeff (EOIR)
<Jeff.Rosenblum@usdoj.gov> wrote:

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

From: Rosenblum, Jeff (EOIR)
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.

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- 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);
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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

From: Rosenblum, Jeff (EOIR)
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: request for leave

Judge Tabaddor

This got forwarded to me and I had some follow-up questions. Are you around? (I got your out of office message on your phone, but I understand you may be in another court.) If you get this, please give me a call. Thanks.

Jeff

(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)
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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

From: Tabaddor, A. Ashley (EOIR)
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

From: Rosenblum, Jeff (EOIR)
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: "Dana Leigh Marks" <danaleighmarks@gmail.com>
Date: September 24, 2012 12:46:25 PM EDT
To: "Osuna, Juan \\\(EOIR\\)" <Juan.Osuna@usdoj.gov>
Cc: "Marks, Dana \\\(EOIR\\)" <Dana.Marks@usdoj.gov>, "Slavin, Denise \\\(EOIR\\)" <Denise.Slavin@usdoj.gov>, "Dana Marks" <danamarks@pobox.com>
Subject: Recusal Issue
Reply-To: <danamarks@pobox.com>

Dear Juan,

Thanks for checking in with me today and agreeing to look into this issue.

Here is a summary which I prepared that outlines our views of this policy decision. At the end it contains the email chain containing the correspondence which shows the origin and evolution of OGC's position to date.

Please let me know if any other information would be helpful.

Please send any correspondence to both my [doj.gov](mailto:usdoj.gov) account and this private email address, danamarks@pobox.com. I am traveling this week and will only have access to my work email on Tuesday and Thursday this week. That restriction is another issue which we ought to resolve some day..... but I will leave that for another conversation at a future date!

Warm regards,
Dana

--
Dana Leigh Marks
BEST E-MAIL: danamarks@pobox.com

--
Dana Leigh Marks
BEST E-MAIL: danamarks@pobox.com

Summary Regarding Ethics Opinion and Recusal Instructions

Judge A. Ashley Tabaddor

September 19, 2012

In a July 5, 2012 email from Jeff Rosenblum on behalf of OGC, Judge Tabaddor was given approval to attend a White House Round Table Discussion with Iranian American Community leaders. In the closing paragraph, Mr. Rosenblum recommended *sua sponte* that Judge Tabaddor should begin to recuse herself from all cases involving Iranian nationals as respondents. Judge Tabaddor sought clarification as no request for recusal had been made by any party to her proceedings and the action contradict governing precedent and policy memorandum on recusals. Moreover, such action would be a departure from past practice without justifiable basis.

The NAIJ believes this ethical interpretation and instruction to Judge Tabaddor is in error for several reasons and seeks your immediate reconsideration of it.

OGC relies on 5 C.F.R. § 2635.502(a) in making the recusal recommendation. 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." Here, reliance on this particular regulation is misplaced because there is no evidence 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 that any of the organizations with which Judge Tabaddor is actively involved represent Iranian refugees/nationals, or that these organizations would be parties coming before her in her capacity as an Immigration Judge. As such it appears that this provision would not require her recusal, as argued by the OGC.

However, the quote referred to in the August 28, 2012 email is similar to a provision contained in a different subsection of the regulations cited in the Ethics and Professionalism Guide for Immigration Judges (Ethics Guide). Pursuant to 5 C.F.R. § 2635.101(b)(14) and Section VI of the Ethics Guide: "An Immigration Judge shall endeavor to avoid any actions that, in the judgment of a reasonable person with knowledge of the relevant facts, would create the appearance that he or she is violating the law or applicable ethical standards." Section VI (citing 5 C.F.R. § 2635.101(b)(14) ("Whether particular circumstances create an appearance that the law or these standards have been violated shall be

determined from the perspective of a reasonable person with knowledge of the relevant facts.") Thus, the ethical obligations applicable to Immigration Judges, along with Standards of Ethical Conduct for Employees of the Executive Branch impose an "appearance of impropriety" standard when evaluating outside conduct. The Ethics Guide and regulations require an Immigration Judge to act impartially. See Section V, 5 C.F.R. § 2365.101(b)(8). In addition to the Ethical Guide, there are laws and regulations governing recusal. Pursuant to 28 U.S.C. § 455:(a) Any justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.(b) He shall also disqualify himself in the following circumstances:(1) Where he has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings..." 28 U.S.C. § 455. Pursuant to regulations specific to Immigration Judges, "[t]he Immigration Judge assigned to conduct the hearing shall at any time withdraw if he or she deems himself or herself disqualified." 8. C.F.R. § 1240(b). The Board of Immigration Appeals has found recusals warranted under three circumstances: (1) when the alien demonstrates that he was denied a constitutionally fair proceeding; (2) when the Immigration Judge has a personal bias stemming from an "extrajudicial" source; and (3) when the Immigration Judge's judicial conduct demonstrates "such pervasive bias and prejudice." *Matter of Exame*, 18 I&N Dec. 303, 305 (BIA 1982) (quoting *Davis v. Board of Sch. Comm 'rs of Mobile County*, 517 F.2d 1044 (5th Cir. 1975). Like the test outlined in the ethics regulations, the test for determining whether recusal is appropriate is an objective one. Under this standard, a judge should recuse him or herself when it would appear to a reasonable person, knowing all the relevant facts, that a judge's impartiality might reasonably be questioned. As one court concisely put it, "the negative bias or prejudice from which the law of recusal protects a party must be grounded in some personal animus or malice that the judge harbors against him, of a kind that a fair-minded person could not entirely set aside when judging certain persons or causes." *U.S. v. Balistreri*, 779 F.2d 1191, 1201 (7th Cir. 1985), *cert. denied*, 477 U.S. 908 (1986). Additionally, as the Agency itself noted in a March 21, 2005 memorandum, "[b]lanket, or broad disqualifications of a judge should be carefully considered, since the compelling evidence standard dictates that judges examine and analyze each case individually to make a determination that disqualification is required." Operating Policies and Procedures Memorandum 05-02, Procedures for Issuing Recusal Orders in Immigration Proceedings; see also *In re Acker*, 696 F. Supp. 591 (N.D. Ala. 1988) (rejecting a broad recusal order on all government cases and instead deciding that "case-by-case" analysis was more consistent with applicable case law); *El Fenix de Puerto Rico v. The M/Y Johnny*, 36 F.3d 136 (5th Cir. 1994) (remanding the case because recusals require a sufficient factual basis).

Here, a reasonable person with knowledge of the relevant facts would not find that her involvement in Iranian-American organizations rises to the level of creating an appearance of impropriety. The general nature of Judge Tabaddor's participation in the organizations, including the fact that her efforts deal not with issues pertaining to Iran nationals seeking asylum in the United States, but instead, with more general issues pertaining to Iranian-Americans including education and opportunity for Iranian-Americans already living in the United States. Moreover, the Agency has failed to identify the "impropriety" it alleges a reasonable person with knowledge of her activities may perceive. Instead, the Agency merely states that Judge Tabaddor is a "prominent advocate for the Iranian-American community, and [her] activities are well documented in the public domain, including but not limited to the internet." Under the Agency's logic, an Immigration Judge who is Christian and actively participates in his or her church could be subject to a recusal order requiring the judge's recusal from all cases in which a request for asylum is made by a Christian based on religious persecution. Moreover, at the very least, the type of "blanket recusal" that the Agency suggests is disfavored, and instead, Judge Tabaddor should be permitted to evaluate each individual case factually and on a case-by-case basis to determine whether recusal is warranted.

With regard to the assignment of cases, under 8 CFR § 1003.9(c), "the Chief Immigration Judge shall have no authority to direct the result of an adjudication assigned to another Immigration Judge, provided, however, that nothing in this part shall be construed to limit the authority of the Chief Immigration Judge in paragraph (b) of this section." Pursuant to paragraph (b), the Chief Immigration Judge is permitted "to regulate the assignment of Immigration Judges to cases." 8 CFR 1003.9(b)(3). However, even under this authority, the parties have agreed that "[n]o employee will be discriminated against by either Management or the Association because of race, color, religion, sex, national origin, age, marital status, sexual orientation, family status, disability, lawful political affiliation, or Association membership or nonmembership." Collective Bargaining Agreement ("CBA"), Section 2.3. Therefore, if the Agency enforces this decision requiring recusal, it would be violation of the parties' CBA because the Agency's recusal order amounts to discrimination on the basis of race.

The series of email correspondence on this issue is reproduced below, in reverse chronological order, for your convenience. Please scroll down to the bottom after the marked break to find the email dated August 20, 2012 from Judge Tabaddor to Mr. Rosenblum so you can read in proper order, from the bottom back up.

We look forward to a prompt and just resolution of this matter.

Thank you.

Dana Leigh Marks, President

National Association of Immigration Judges

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: McGoings, Michael (EOIR)
To: Slavin, Denise (EOIR)
Cc: Marks, Dana (EOIR); Keller; Tabaddor, A. Ashley (EOIR)
Subject: FW: Extension Request
Date: Tuesday, October 02, 2012 4:11:46 PM

Judge Slavin:

I have reviewed the underlying matter and your request for an extension of time to file a grievance thereon. I have also considered that under Article 8 of the CBA, a grievance must be initiated within 30 work days of the allegedly grievable incident.

In sum, setting aside for now the issue of whether the matter is covered under Article 8, given that far more than 30 work days have elapsed since July 5, 2012, when the ethics advice was provided to IJ Tabaddor (and here I emphasize the term advice, as opposed to what you have characterized as an "instruction" on the part of an Agency ethics official), I decline to grant any extension request to file a grievance.

Michael C. McGoings
Deputy Chief Immigration Judge

From: Slavin, Denise (EOIR)
Sent: Monday, October 01, 2012 11:13 AM
To: McGoings, Michael (EOIR)
Cc: Slavin, Denise (EOIR); Marks, Dana (EOIR); Tabaddor, A. Ashley (EOIR); Keller, Mary Beth (EOIR)
Subject: Extension Request

Dear Judge McGoings

In an abundance of caution, and in order to research and reflect upon the matter in light of our conversation on Thursday, September 27 with ACIJ Keller and Jeff Rosenblum, we are requesting an extension of any deadline to file a grievance regarding the instruction that Judge Tabaddor recuse herself from cases involving Iranian nationals until October 31, 2012.

Thank you for your attention to this matter.

Denise Slavin, Exec. Vice President
NAIJ

Speaking Engagement Form

You must obtain your supervisor's approval to participate in the event prior to submitting this form. Once you have your supervisor's approval fax this form and any supporting documents to the Ethics Officer at (703) 305-0443. The Ethics Office will respond to your request via email. If you have questions, contact the Ethics office at EOIR.Ethics@usdoj.gov or call the OGC mainline at (703) 305-0470 and ask for the Ethics Officer.

Name: A. Ashley Tabaddor
Phone: 213-534-4491
Component: Immigration Court
Title: Immigration Judge
Work Location: Los Angeles
Supervisor's Name: ACIJ Fong
Supervisor's Approval:

Handwritten signature of A. Ashley Tabaddor and a date stamp "APR 11 2012".

Event Date(s)/Time: APR 11 2012
Friday, April 20th, 2012 from 3:00 to 4:30 p.m. (I am on leave the entire day)

What is the nature of the event?
Spring Conference for Pacific Council on International Policy (PCIP)

What organization issued the invitation or is sponsoring the event?
PCIP- The Pacific Council on International Policy is a non-partisan organization headquartered in Los Angeles with members and activities throughout the West Coast of the United States and internationally. The Council is governed by a Board of Directors co-chaired by John E. Bryson, former Chairman and CEO of Edison International, and Warren Christopher, former U.S. Secretary of State. Jerrold D. Green is the President and CEO of the Pacific Council. Founded in 1995 in partnership with the Council on Foreign Relations, the Pacific Council is a 501(c)(3) not-profit organization. For more information please see www.pacificcouncil.org

What is the topic of your presentation?
I will be moderating a panel on "Democracy, Corruption and Law across Borders." The general topic is intended to address challenges that arise in implementing effective international policy in the era where borders between nations are blurred by the constant flow of people, goods, and information.

Who is the anticipated audience?
Members and guests of PCIP who have signed up to attend this conference.

Who are the other anticipated speakers?
I have attached a copy of the agenda for the day. However, the panel which I will be moderating has the following confirmed speakers:
(1) Prof. Colleen Graffy, Professor of Law & UK Barrister, Pepperdine University London Program; former U.S. Deputy Assistant Secretary of State for Public Diplomacy
(2) Mr. Jeremy Maltby, Partner, O'Melveny & Myers LLP

(3) Mr. David M. Lawrence, Global Director, Business Intelligence Group, Goldman Sachs

Will there be food or refreshments served as part of the event? Please give the estimated food cost and food description:

This is a day long conference. Therefore all meals and snacks will be provided.

Is there a fee to attend? Please give the amount of the fee:

Yes, there is a \$175 fee to attend the conference. As a member, I have already signed up and paid for the conference which covers the cost of the meals.

Are you planning to attend the event in addition to speaking?

Yes.

If so, were you offered a reduced or waived fee to attend?

No.

What is the value of the savings? \$0

Will there be fundraising at the event?

No.

Has the organization offered you any compensation for the event (i.e. CLE credit, speaker's fee, etc.)?

No.

Has the organization offered to reimburse you for the costs of attendance (airfare, lodging, mileage, parking, etc.)?

No.

Will you distribute any written material incident to your speaking engagement? If yes, describe the material and attach it to this form.

No.

Will the event have Press/Media coverage?

No.

Please add any additional information:

I have moderator other panels for this organization before.

Pacific Council

ON INTERNATIONAL POLICY

Spring Conference 2012

Rising Global Discontent: The Road from Protest to Progress

April 20

California Club | Los Angeles

Agenda:

8:30 AM **Registration Opens** (Gold Room)

Attendees may arrive this morning at their convenience in advance of the breakfast session.

8:45 - 9:30 **Breakfast Roundtables** (Second Floor Dining Room)

AM *Each table discussion will be facilitated by a member of the Pacific Council Board, together with a new member of the Council. Discussions will be informal in order to encourage networking and inclusive conversation.*

California Divided? Hollywood and Silicon Valley on the World Stage

The global interests of these two powerhouse regions in California often differ considerably, as was clear in the debates over SOPA and PIPA recently. What should California's role be in the debate over freedom of information and intellectual property protection on the web?

Public vs. Private Power: Corporations as the Next Diplomats

As private power continues to increase, so does the power struggle between business and governments has emerged. How will this phenomenon continue to affect the economic and political trajectories of the United States? And can corporations use their great reach, resources, and influence to more strategically conduct diplomacy abroad?

Emerging Economies: A New World Balance?

Emerging nations are increasingly playing more significant global economic and political roles – demanding louder voices in international organizations, leading diplomatic and relief efforts, and cooperating amongst themselves on significant economic and development initiatives. What will the era of the BRICs look like?

U.S. Education Reform and National Security

The United States faces great risk in its sustained educational failure, which puts at risk future economic prosperity and the U.S. global position. Can the country keep pace, let alone lead, without moving to fix the educational system and improve the prospects of future generations?

The agenda is subject to change. This agenda is current as of 4/10/12.

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The recent examples of misinformed public discourse on significant global issues (labor rights abuses at Apple suppliers in China, and the Lord's Resistance Army in Central Africa) have raised the question: is theatrical exaggeration acceptable in moving people to act on international human rights issues?

9:45 -
10:45 AM

Breakout Discussions: Session 1

The Challenge of Global Threats: Innovating for Human Security

Mr. Edmund J. Cain, Vice President of Grant Programs, Conrad N. Hilton Foundation
Rear Admiral Peter Neffenger, Director of Strategy, United States Coast Guard (CG-095)

Mr. Ted Richane, Vice President, Cause & Affect

Moderator: Ms. Nancy A. Aossey, President & CEO, International Medical Corps

Iran's Nuclear Future

Dr. James Coyle, Director, Center for Global Education, Chapman University

Dr. Jerrold D. Green, President & CEO, Pacific Council on International Policy

Ms. Juliette Kayyem, national security and foreign policy columnist, *Boston Globe*, and lecturer in public policy, Kennedy School of Government, Harvard University

Chair: Mr. Steven S. Myers, Chairman & CEO, Dolphin Capital Holdings, Inc. and Chair, Pacific Council National Security Committee

11:00 AM -
12:15 PM

Plenary Panel (Second Floor Dining Room)

The US-China Relationship in a Transition Year

Ms. Nina L. Hachigian, Senior Fellow, Center for American Progress

Dr. Jeffrey Wasserstrom, Professor of History, University of California, Irvine & Co-founder, *The China Beat*

Mr. Robert Schmitz, China Bureau Chief, Marketplace, American Public Media

12:30 -
2:00 PM

Luncheon Interview (Second Floor Dining Room)

Innovation and Entrepreneurship for U.S. National Security

Mr. Naveen Jain, Founder & CEO, Intelius Inc.

2:00 - 2:30
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During this break, participants may opt to learn about how to engage with the Pacific Council and other members through Twitter, LinkedIn, Facebook and other platforms.

2:30-3:15
PM

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Group discussion of current initiatives underway and visions for the future of the Pacific Council.

3:30 - 4:30
PM

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Toward an Arms Trade Treaty

Ms. Kathi L. Austin, Executive Director, Conflict Awareness Project and Senior Information Analyst, United Nations

Prof. Edwin M. Smith, Leon Benwell Professor of Law, International Relations and Political Science, USC Gould School of Law

Moderator: Mr. Alastair Leithead, West Coast correspondent, BBC

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Moderator: Judge Ashley Tabaddor, U.S. Immigration Court (in her personal capacity)

4:45 - 6:00 PM Plenary Panel (Second Floor Dining Room)

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To be announced

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Name: A. Ashley Tabaddor
Phone: 213-534-4491
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Title: Immigration Judge
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Supervisor's Approval:

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Please add any additional information:

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ON INTERNATIONAL POLICY

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To be announced

Adjourn

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From: Rosenblum, Jeff (EOIR)
Sent: Wednesday, July 25, 2012 4:38 PM
To: Videla, Gabriel (EOIR)
Cc: Reinfurt, Sandy (EOIR); Weisel, Robert (EOIR)
Subject: RE: Official v. personal capacity

Judge Videla,

Thanks for your e-mail; I'm glad you enjoyed the presentation!

For Immigration Judges, whether they speak officially or personally is generally more a matter of OCIJ approval than subject matter. Because IJs are asked to speak so often, it would not be practical for OCIJ to approve them to speak officially on all occasions. This is because, among other reasons: if an IJ is speaking officially, he is speaking on behalf of the Department, and he will have to ensure that his remarks are in line with Department policy; the Department/OCIJ does not always want an IJ speaking officially; the benefits would not outweigh the burden of the collective time away from the bench; if an IJ speaks officially, the Department generally must pay any associated travel costs.

Therefore, most IJs are approved to speak at such events in their personal capacity. If the subject matter relates to an IJ's responsibilities, though, provided that the ACIJ approves, the IJ can use his official title; provided that he also use the appropriate disclaimer, as you mentioned.

If an event is of particular significance to the Department, and/or if OCIJ management asks the IJ to speak, an IJ may be approved to speak officially. This decision is generally made by the ACIJ, often in consultation with either the Deputy Chief and/or Chief Immigration Judge.

Thus, there are generally three categories of speaking capacity: Official (must be approved by OCIJ management and relate to the IJ's official duties); personal with title and disclaimer (most often approved for IJs; must relate to the IJ's official duties); personal (unrelated to the IJ's position; no use of title allowed).

I hope this helps. Please feel free to call or e-mail if you want to discuss further. Thanks,

Jeff

Jeff Rosenblum
Executive Office for Immigration Review
Office of the General Counsel
(703) 305-0799

From: EOIR, Ethics (EOIR)
Sent: Thursday, April 12, 2012 4:36 PM
To: Tabaddor, A. Ashley (EOIR)
Cc: Billingsley, Kelly (EOIR); Smith, Charles (EOIR)
Subject: RE: PCIP speaker engagement

IJ Tabaddor,

You have requested ethics advice regarding a proposed speaking engagement at the Spring Conference of the Pacific Counsel on International Policy (PCIP), scheduled for April 20, 2012. You have submitted the attached form and other information detailing your moderator/speaking role on a panel titled "Democracy, Corruption and Law Across Borders." You will not receive any compensation for this event, and you have paid the full conference attendance fee. Also, your supervisor, ACIJ Fong, has approved your request to participate in your personal capacity (I telephoned ACIJ Fong to clarify that he had only approved your personal capacity participation as a speaker).

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 that your title and affiliation have been listed in the PCIP draft agenda that you provided – however, the ethics limitation on using your DOJ title/affiliation applies to such a listing. Accordingly, you must take affirmative steps with PCIP to remove that information. *Please coordinate with the sponsor to make certain that this does not occur with other materials that might be used at the conference.*

Notwithstanding, please also note that when speaking in a personal capacity, 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 the 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;
- You generally must participate in the outside activity either during off-duty hours, or take leave for any participation that occurs during duty hours (you indicated that you have already obtained annual leave for the day of the event);
- 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 this outside activity, 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: Tuesday, April 10, 2012 6:50 PM
To: Fong, Thomas (EOIR)
Cc: Rosenblum, Jeff (EOIR); EOIR, Ethics (EOIR); Kok, Sharon (EOIR)
Subject: FW: PCIP speaker engagement

Thank you!

From: Fong, Thomas (EOIR)
Sent: Tuesday, April 10, 2012 3:02 PM
To: Tabaddor, A. Ashley (EOIR)
Cc: Kok, Sharon (EOIR)
Subject: FW: PCIP speaker engagement

Judge Tabaddor, based on the submission attached and you being on annual leave that day you have my approval. Sharon K. will be prepare it for further review and approval by OGC 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: Tuesday, April 10, 2012 2:28 PM
To: Fong, Thomas (EOIR)
Subject: PCIP speaker engagement

Hi Tom,

I hope you are doing well. I have been asked to moderate a panel during a day long conference that I'm attending on April 20th. This with the Pacific Council on International Policy. I have moderated another panel for them before. Please see the attached speaking engagement form along with a copy of the draft agenda. Please let me know if you have any questions.

Thanks!

Ashley