

## Immigration Judges Slam DOJ Ban On Iranian Judge

By **Vin Gurrieri**

*Law360, New York (February 25, 2015, 8:40 PM ET)* -- The National Association of Immigration Judges on Wednesday panned the U.S. Department of Justice's order to recuse a judge of Iranian descent from any immigration cases involving people from Iran, telling a California federal court that the order strikes at the integrity of the entire immigration court system.

The NAIJ made its contentions in an amicus brief filed as part of an August lawsuit filed by Immigration Judge Afsaneh Ashley Tabaddor, who sits within the DOJ's Executive Office for Immigration Review, accusing U.S. Attorney General Eric Holder, the Justice Department and others of discrimination and First Amendment violations.

In its brief, the NAIJ said that the blanket recusal order against Judge Tabaddor, who is described in the suit as an active and "highly respected" member of the Iranian-American community, was arbitrary and flouted the EOIR's own policies for issuing such orders.

"The extraordinary act of barring an immigration judge from hearing cases involving entire classes of persons chills free association and engagement and threatens the integrity of the immigration court system," the NAIJ's brief said. "The dignity and integrity of the immigration court must be preserved ... but arbitrary, blanket disqualification of judges impugns that integrity."

The NAIJ said that "conspicuously absent" from the EOIR's analysis that led to its order is "any rational connection" between the judge's activities — which included participating in meetings with other prominent Iranian-Americans — and her cases involving Iranian nationals.

"The only apparent connection between Judge Tabaddor's extrajudicial activities and cases involving Iranians seems to be derivatives of the word 'Iran,'" the brief said. "Simply put, the EOIR's conclusion of potential bias by Judge Tabaddor has no basis in fact."

In taking a broader view of the EOIR's order, the NAIJ said it poses a risk to every immigration judge who chooses to participate in civic activities outside the courtroom — actions which are often encouraged by the DOJ — that could then be used to disqualify them from cases.

The NAIJ offered numerous examples: an immigration judge who is active in his church could be barred from hearing cases involving persons of the same religion, an active member of the LGBT community precluded from cases involving gays and lesbians, or an Irish judge active in Irish advocacy prevented from hearing cases with respondents from Ireland.

“The potential scenarios are endless because arbitrary decisions have no limits,” the NAIJ said. “No immigration judge should have to worry about being the object of a blanket recusal order ... based upon his or her community and civic involvement.”

The group noted that although there are certain limits on judges' free speech and freedom of association rights because of their place in society, judges “do not completely surrender the rights of free speech when they first don the robe.”

In this case, the EOIR exceeded its limits when it issued its order against Judge Tabaddor and, according to the NAIJ, the strong potential for similar action by the EOIR against any other immigration judge “chills or obliterates the already limited right of free speech and free association possessed by all NAIJ member judges.”

Moreover, the NAIJ said that the DOJ's use of Judge Tabaddor's ethnic heritage as the basis for its decision sets “a very dangerous precedent” because the perception of national and ethnic bias by judges among the public at large would “completely eviscerate” the integrity of the entire immigration court system.

The use of ethnic heritage or national origin by the DOJ to issue such blanket recusal orders, according to the NAIJ, is also “a slippery slope” since the practice could be expanded to incorporate almost any personal attribute.

“Given the EOIR's conduct in connection with Judge Tabaddor's case, it is easy to envision the EOIR using blanket recusal orders or the threat of such orders to influence how immigration judges rule in matters of particular interest to the government,” the NAIJ's brief said.

The brief noted that the EOIR does indeed possess the authority to restrict the speech or actions of immigration judges, but that such authority is “properly limited.”

Ali Mojdehi of Cooley LLP, an attorney representing the judge, told Law360 on Wednesday that his client welcomes the NAIJ's brief and that the DOJ's position “raises serious policy issues.

“I agree with [the NAIJ's position] and would go further to say that I think the position taken by the DOJ is a challenge to what well-established standards are for recusal at large,” Mojdehi said.

On Monday, Judge Tabaddor also filed an opposition to the government's motion to dismiss the suit, saying among her arguments that the DOJ took a completely different position toward recusal in a Michigan federal court case last year when it argued that a judge's activities outside the courtroom, even where they endorsed a particular ideology, could not support recusal.

The NAIJ is recognized as the collective bargaining unit for all U.S. immigration judges,

A representative for the DOJ was not immediately available for comment late Wednesday. Immigration Judge Dana Leigh Marks, president of the NAIJ, was also not immediately available.

The plaintiff is represented by Ali M.M. Mojdehi, Janet Dean Gertz, Jon F. Cieslak and Allison Rego of Cooley LLP.

The government is represented by Joyce R. Branda, Susan Rudy and Benjamin L. Berwick of the DOJ.

The NAIJ is represented by Bryan King Sheldon, Sandra Sakamoto and Mark T. Hansen of Lim Ruger & Kim LLP.

The case is Tabaddor v. Holder et al., case number 2:14-cv-6309, in the U.S. District Court for the Central District of California.

--Editing by Kelly Duncan.

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