EXHIBIT A

LIM RUGER & KIM, LLP
Bryan King Sheldon (Bar No. 116219)
Email: bryan.sheldon@limruger.com
Sandra Sakamoto (Bar No. 112407)
Email: sandy.sakamoto@limruger.com
Mark T. Hansen (Bar No. 114915)
Email: mark.hansen@limruger.com
1055 West Seventh Street, Suite 2800
Los Angeles, California 90017
Telephone: (213) 955-9500
Facsimile: (213) 955-9511

Attorneys for The National Association
Of Immigration Judges as Amicus Curaie

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

AFSANEH ASHLEY TABADDOR,

Plaintiff,

v.

ERIC HOLDER, JR., Attorney General of the United States, United States Department of Justice; JEFFREY A. ROSENBLUM, General Counsel, Executive Office for Immigration Review; THOMAS Y.K. FONG, Assistant Chief Immigration Judge, Executive Office for Immigration Review; MARLENE M. WAHOWIAK, Associate General Counsel, Executive Office for Immigration Review; UNITED STATES DEPARTMENT OF JUSTICE; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; OFFICE OF

Case No. 2:14-cv-6309-GW-CW

***AMICUS CURIAE* BRIEF OF THE NATIONAL ASSOCIATION OF IMMIGRATION JUDGES**

THE GENERAL COUNSEL; OFFICE OF THE CHIEF IMMIGRATION JUDGE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Defendants.

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INTRODUCTION

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. Gravely concerned that the threat of a blanket recusal order, such as that imposed upon Judge Tabaddor, looms over a broad spectrum of its members' extrajudicial activities, The National Association of Immigration Judges[1] ("NAIJ") submits this *Amicus Curiae* brief.

The dignity and integrity of the immigration court must be preserved. Recusal may occasionally be warranted, but arbitrary, blanket disqualification of judges impugns that integrity. An order proclaiming an appearance of bias but unsubstantiated by facts is ironically a demonstration of bias itself. In order to preserve the integrity of the court and the rights of immigration judges, the recusal of Judge Tabaddor should be rescinded and enjoined.

DISCUSSION

I. THE BLANKET RECUSAL WAS ARBITRARY AND CONTRARY TO EOIR POLICY

A. EOIR Policies and Requirements for Recusal.

The Executive Office for Immigration Review's ("EOIR")[2] own policies on recusals make clear that "[b]ecause recusals attack the essence of our legal system – the impartiality of a judge – they are a serious matter. Indeed, judges faced with a possible recusal situation must go through an extensive analysis of the surrounding circumstances prior to issuing any decision on the matter. Morever, **such decisions must be predicated on compelling evidence rather than mere allegations or conclusory facts**. *United States v. Balistrieri*, 779 F.2d 1191, 1202

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[1] The NAIJ is the recognized representative for collective bargaining for all U.S. Immigration Judges. It's full Statement of Interest is contained in its application for leave to file this brief.

[2] The EOIR is a part of the United States Department of Justice ("DOJ").

(7th Cir. 1985)."[3] Recusal decisions must consider "a truthful and thorough examination of the relevant facts and circumstances, not merely [ ] contentions and innuendos." *Sexson v. Servaas*, 830 F.Supp. 475, 477 (S.D. Ind. 1993), *aff'd*, 33 F.3d 799 (7th Cir. 1994).

As set forth in the OPPM, 28 U.S.C. § 455 and applicable case law provide "strong guidance" on the recusal issue to immigration judges. Section 455 states in part:

> (a) Any justice, judge, or magistrate [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 a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; . .

A recusal order based upon the appearance of partiality or impropriety is not decided upon superficial appearances as the term might suggest – rather, it must be based upon an evaluation of facts to determine whether a judge's impartiality would be questioned by a reasonable person fully informed of all facts and circumstances. The test of impartiality is an objective standard based upon knowledge and understanding of all facts and circumstances. *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1313 (2nd Cir. 1988), *reh'g denied*, 869 F.2d 1116 (2nd Cir. 1989).

The Ninth Circuit follows a "bias-in-fact" approach when evaluating recusal decisions pursuant to 28 U.S.C. § 455. *See Idaho v. Freeman*, 507 F.Supp. 706, 725-726 (D. Idaho 1981) (judge's leadership position with the church and

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[3] Operating Policies and Procedures Memorandum 05-02: Procedures for Issuing Recusal Orders in Immigration Proceedings ("OPPM"), March 21, 2005 p. 6. *See* Compl. ¶ 66; available at http://www.justice.gov/eoir/efoia/ocij/oppm05/05-02.pdf (last visited Feb. 14, 2015), (emphasis from the OPPM). This Memorandum 05-02 was issued by the Office of the Chief Immigration Judge of the Executive Office for Immigration Review at the U.S. Department of Justice.

church's opposition to Equal Rights Amendment insufficient to establish appearance of impartiality in a case challenging the ERA). Still further, there must be a showing of personal animus toward a party, or an invidious motive such as racial bias or financial interest, to establish an appearance or fact of bias to justify recusal. *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980); *see also e.g., Balistrieri*, 779 F.2d at 1201.

The need to proceed cautiously when considering a recusal is even more critical in the case of a blanket order. The OPPM warns, blanket recusals "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." OPPM, *supra.,* p.6. (emphasis in original). *See also El Fenix de Puerto Rico v, The M/Y Johanny,*36 F.3d 136, 140-141 (5th Cir. 1994); *In Re Acker*, 696 F.Supp. 591 (N.D. Ala. 1988).

B. The EOIR Has Failed To Comply With Its Own Policies

The EOIR bases its blanket recusal order against Judge Tabaddor on only a selective portion of 5 C.F.R. § 2635.502(a), namely, "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*.'" *See* First Amended Complaint ("FAC") 13:4-7 (emphasis added). Section 2635.502(a) is not so limited.[4] The impartiality language EOIR cites must be paired with "a direct financial interest of a member of the household" *or*

[4] 5 C.F.R. § 2635.502(a) (2015) reads: "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." (emphasis added).

knowledge "that a person with whom he has a covered relationship is or represents a party to such matter." The EOIR ignores this predicate and presents no claim that a financial interest or covered relationship[5] played a part in its decision as to Judge Tabaddor.

In fact, section 2635.502(a) sets forth the criteria for a case-by-case analysis in reference to "a particular matter involving specific parties"-- not the abstract consideration apparently used by EOIR in the case of Judge Tabaddor.

C. Arbitrary And Capricious Recusals Threaten Protected Activities Of All Immigration Judges.

Reliance upon unfounded characterizations is tantamount to assumption-based decision-making; and decisions based upon such superficial perceptions offer no guideposts or assurances of rational determinations, consistency or protection against arbitrariness. Here, the EOIR based its blanket disqualification of Judge Tabaddor from hearing cases involving Iranian nationals on a conclusion that Judge Tabaddor was a "prominent advocate for the Iranian-American community" whose "activities [were] well-documented in the public domain." Apparently, the EOIR premised this conclusion on Judge Tabaddor's participation in a meeting with American leaders of Iranian descent and other similar activities, from which it further concluded, without more, that she would be perceived as favoring or disfavoring nationals from Iran. Conspicuously absent from this "analysis" by the EOIR is any rational connection between Judge Tabaddor's activities and her cases involving Iranian nationals. This is probably not surprising given that there was no evidence that Judge Tabaddor's activities included advocacy that directly bear on asylum for Iranian nationals or matters

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[5] A "covered relationship" is defined to include among others, relationships with a person whom the employee or his/her family has or seeks a business, contractual or other financial relationship, or an organization in which the employee is an active participate. 5 C.F.R. § 2635.502(b)(1) (2015).

relevant to the Immigration Court. The only apparent connection between Judge Tabaddor's extrajudicial activities and cases involving Iranians seems to be derivatives of the word "Iran" and facial assumptions made about the interests, activities and involvement by Judge Tabaddor related to the Iranian-American community. Simply put, the EOIR's conclusion of potential bias by Judge Tabaddor had no basis in fact.

Untethered to any particular matter, specific party, familial relationship, issue pending before the court, or any of the other criteria set forth in the ethical standards applicable to recusals, the recusal decision by the EOIR can only be described as arbitrary and capricious. Decisions such as this are dangerous because, among other things, they are necessarily founded upon the conscious and unconscious biases of the decision-maker[6] rather than the required fully-informed reasonable person standard.

Decision-making of this type threatens every immigration judge with disqualification from cases involving classes of people for activities he/she has been encouraged by the DOJ and the EOIR to undertake at the workplace and in society as a whole[7]. It is ironic that the EOIR encourages participation by

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[6] The objective standard aspires to guard against the biases of the decision-maker. "[T]he inquiry to be made is "whether a reasonable person perceives a significant risk that the judge will resolve the case on a basis other than the merits." *Hook v. McDade*, 89 F.3d 350, 354 (7th Cir. 1996) (citation omitted). This inquiry is made based on a reasonable person standard, as opposed to "a hypersensitive or unduly suspicious person." *Id.* (citation omitted). "Thus trivial risks of perceived impartiality are insufficient to warrant recusal." *In re African-American Slave Descendents Litig.*, 307 F.Supp.2d 977,983 (N.D. Ill. 2004), *aff'd in part, rev'd in part*, 471 F.3d 754 (7th Cir. 2006) (*citing McDade*, 89 F.3d at 354.)

[7] As respected and accomplished members of society courts recognize the societal benefits of participation by judges. As aptly put by one court: "In taking the oath of office as a judge, a person does not agree to be a hermit removed from the world. Traditionally, societies choose persons who are leaders of society to be judges. It would make no sense to prohibit them from using leadership and other abilities in helping our society so long as it does not create a conflict of interest or violate other provisions of the Code of Conduct." *Sexson*, 830 F.Supp. at 478 (citing, *In Re Complaint Against District Judge Sarah Evans Barker*, No. 93-7-372-5, Judicial

immigration judges in outside activities, but then uses those same activities as a basis for uninformed blanket recusals. A loosely based charge of potential bias could disqualify an immigration judge active in his church from hearing cases involving persons of the same religion (*cf., Freeman*, 507 F.Supp. at 729.), or who is active in the LGBT community from hearing cases involving gays and lesbians. *See*, *e.g.*, *Hayes v National Football League*, 463 F.Supp. 1174, 1180 (C.D. Cal. 1979). The potential scenarios are endless because arbitrary decisions have no limits.

No immigration judge should have to worry about being the object of a summary blanket recusal order from the EOIR based upon his/her community and civic involvement. Of course, judges must be mindful and careful about the potential for the perception of bias, follow ethical guidelines, and seek approvals where necessary. However, he/she should be able to participate in outside activities with the knowledge and confidence that if required, a careful evaluation of the facts and circumstances will be made before any decision regarding recusal is made.

II. THE ACTION OF THE EOIR DEPRIVES IMMIGRATION JUDGES OF THEIR RIGHTS OF FREE SPEECH

Judges do not completely surrender the rights of free speech when they first don the robe. While it is well understood and accepted that due to their unique place in society, judges are not afforded the same freedom of speech and freedom of association as ordinary citizens, there are limits to the limits on judges' rights. The EOIR exceeded those limits when it arbitrarily and capriciously imposed a blanket recusal order based upon Judge Tabaddor's lawful exercise of her First

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Council of the Seventh Circuit, at 2.) "Taking the bench is a form of public service which does not operate to exclude all other forms of social and civic life. . . .What could be more inimical to the sound application of contemporary standards of justice than to banish those who must administer it to an uncontemporary existence?" *Id.* at 482. .

Amendment rights. 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.

NAIJ does not suggest that the EOIR lacks the legal right to restrict the speech or actions of immigration judges. Plainly that authority exists, when properly limited. *See, e.g., United States Civ. Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 599-600 (1973); *Connick v. Myers*, 461 U.S. 138, 142 (1983); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968). However, as these authorities establish, the EOIR's right to limit the speech of immigration judges must be balanced against the general freedom of judges to participate in the affairs of society, to contribute their time and voices to matters of concern to them, and even to advocate for social causes or on behalf of defined groups that are not directly related to their judicial service.

Content neutral restrictions on judicial speech of the type at issue here are generally reviewed under the standards for evaluating restrictions on speech and conduct applied to government employees in general. *Rankin v. McPherson*, 483 U.S. 378, 384 and 392 (1987); *Connick*, 461 U.S. at 154. Such restrictions are evaluated by balancing the government's legitimate interests in preventing certain speech against the judge's right to freely express himself or herself on issues of public concern. *Pickering,* 391 U.S. at 568.

As the Supreme Court has observed, "(e)mployees should be allowed to speak freely on matters of public concern without fear of retaliatory dismissal." *Id.* at 572. Extending the government employee concept specifically to judges, Professor Erwin Chemerinsky has written that "(j)udicial speech, even about pending cases, should be regarded as constitutionally protected unless the government can prove that the speech posed a substantial likelihood of prejudicing an adjudicatory proceeding, or at the very least prove that the

statement might reasonably be expected to affect its outcome or impair its fairness. Erwin Chemerinsky, Is it the Siren's Call: Judges and Free Speech while Cases are Pending, Loy. L.A. L. Rev. 28, 831, 844 (1994); *See also In Re Disciplinary Proceeding against Richard B. Sanders*, 955 P.2d 369, 370 (Wash. 1998) (applying the law of the State of Washington, holding that while judges maintain free speech rights upon taking the bench, "They do agree, however, that the right must be balanced against the public's legitimate expectations of judicial impartiality. But the constitutional concern weighs more heavily in that balance, requiring clear and convincing evidence of speech or conduct that casts doubt on a judge's integrity, independence, or impartiality in order to justify placing a restriction on that right.").

To be sure, the EOIR has not explicitly ordered immigration judges to refrain from any specific speech or conduct, nor has it explicitly forbidden judges from participating in off-duty "advocacy." Nonetheless, the EOIR's conduct in regard to Judge Tabaddor has the same effect as such an order. The unqualified categorical recusal order imposed by the EOIR on Judge Tabaddor informs all NAIJ member immigration judges that they may not engage in speech or private activity to the extent that they could be perceived by the EOIR as an "advocate" for any identifiable group and then consequently be subject to blanket recusal from all cases involving litigants even tangentially related to the supposed advocacy.

When reviewing employer restrictions on employee speech and conduct, courts look not only to written restrictive rule, but also to how the rule is construed and applied by the employer. *See, e.g.*, *Magill v. Lynch*, 560 F.2d 22, 27 (1st Cir. 1977). Here, it is application of the vague but facially valid rules that matter. In this situation, the EOIR misapplied its policy that judges avoid the appearance of impropriety by imposing a blanket recusal from all matters

involving people of the judge's own, or a closely related, ethnicity or national origin group if the judge associates with, or in its words, advocates for that group.

With guidance from the courts in *Pickering*, *Connick* and *Letter Carriers*, when balancing (as this Court must) the rights of immigration judges to speak freely on issues of public concern and to associate with individuals and groups who have no direct connection to their judging, against actions that disqualify immigration judges from all matters involving persons that may share a similar national origin, however tangential, whether by relation, time, generation, or geography, to avoid a problem of "appearance," the rights of free speech and association must prevail.

The analysis must recognize that not all speech is equal. Speech consisting of matters of public concern is guarded more carefully. It is axiomatic that "advocacy" on behalf of a broadly defined group pertains to issues of legitimate public concern. According to the EOIR, Judge Tabaddor's advocacy is of such a high level that she was "invited by the White House Office of Public Engagement to speak on behalf of the Iranian-American community...." FAC 14:5-10. That the speech involved a matter of public concern was an important determinant in *Pickering*, where the restriction on employee's speech was held illegal, but in *Connick* the speech was found not of public concern and the restriction on employee speech was held legal. Thus, this factor tips the balance in favor of Judge Tabaddor as she has a strong right to freely engage in the questioned speech and activities.

Next in the balancing process, the Court must review the legitimate right of the EOIR to enforce rules that prohibit immigration judges from engaging in conduct that creates an appearance of impropriety with respect to their judicial role. The problem here is that the EOIR's over-reaching misapplication of that

legitimate right results in an indefensible interference with the free speech rights of all NAIJ member judges.

The EOIR concedes that it is "in no way … suggesting that you [Tabaddor] have an actual bias" and it failed to (and cannot) identify any act or speech by Judge Tabaddor that pertains to or creates an appearance of impropriety. Instead, the EOIR appears to assume that because Judge Tabaddor is herself an Iranian-American, works with and is active with the Iranian-American community, that she cannot be trusted to fairly adjudicate cases involving "respondents from Iran" or that there is an appearance of impropriety created by doing so. There is simply no logic in this. For if the restriction is logically justified, then judges of Irish heritage who participate in Irish heritage groups or advocacy, should likewise be barred from hearing cases involving respondents from Ireland, judges of a particular gender who advocate for gender specific issues should be barred from hearing matters involving respondents of that gender, and so on. Indeed, the EOIR's misapplication of its own rules is so illogical that it is not even clear what appearance of impropriety it is claiming to guard against. Is it concerned that Judge Tabaddor would be perceived as unfairly favoring "respondents from Iran," or disfavoring them? The EOIR's utterly illogical misapplication of its rules, directed against one particular judge of one particular ethnicity, reveals the lack of any valid basis for punishing the judge for her off-duty speech and actions.

Neither is there any basis to uphold the EOIR's restrictions on speech and association under the guise of prohibiting political engagement. There has been much judicial analysis of the prohibition against overt political activity by government employees contained in the Hatch Act, 5 U.S.C. §§ 7324 et seq., and it may be tempting to believe that some courts' acceptance of the prohibition reflects an agreement that any vague political speech or activity can be banned by a government employer. That is not the case at all. The Supreme Court has held

that a particularly important justification for the Hatch Act is to "make sure that Government employees would be free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors rather than to act out their own beliefs." *United States v. Nat'l Treasury Employees Union*, 513 U.S. 454, 471 (1995) (citing, *U.S. Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers*, *supra*, 413 U.S. 548, 557 (1973), which holds that "It is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited.") Importantly, the Hatch Act itself "exempts nonpartisan political activity." *Nat'l Ass'n of Letter Carriers*, 413 U.S. at 576 (citing 5 U.S.C. §§ 7324(c) and 7326.)

When balancing the free speech and association rights of Judge Tabaddor and NAIJ member judges against the deeply flawed regulation of such speech and association as applied by the EOIR, the balance tips sharply in favor of the judges. A groundless categorical recusal is a violation of First Amendment rights and should not be allowed to stand.

III. BLANKET RECUSAL ORDERS UNDERMINE DOJ POLICY AND THREATEN INTEGRITY OF THE IMMIGRATION COURT

A. Blanket Recusal Orders Based Upon Ethnic Heritage or Association Are Contrary to DOJ Policy.

Blanket recusal orders premised upon national origin/ethnic heritage and/or involvement in outside activities and/or organizations related thereto, such as the one imposed on Judge Tabaddor, contravene important policies of the DOJ.

Since at least May 2000, the DOJ has encouraged its employees to "participate in outside volunteer and professional activities, including *pro bono*

and bar activities."[8] The range of activities in which employees can participate is broad. However, DOJ employees may not engage in any outside activity that conflicts with the employee's official duties.[9] In some cases, an employee may be required to obtain pre-approval from his/her supervisor before participating in certain outside activities.[10]

A blanket recusal order against any immigration judge who participates in outside activities that do not conflict with that judge's official duties, especially where such activities relate to the judge's national origin or ethnic heritage, is inimical to the DOJ's policy of encouraging employees to become involved in their communities. Indeed, faced with the risk of becoming the object of a blanket recusal order, it is unlikely that many immigration judges would choose to follow this DOJ policy. This is particularly true where, as in the case of Judge Tabaddor, the outside activities were previously approved by the EOIR. This problem is exacerbated by the EOIR's failure to provide immigration judges with guidance regarding how much involvement in outside activities is "too much," leaving judges who do try to follow the DOJ policy with the prospect of finding themselves in a "gotcha" situation.

B. Blanket Recusal Orders Based Upon Ethnic Heritage or Association Threaten the Integrity of the Immigration Courts.

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[8] U.S. Dep't Justice Memorandum from Deputy Attorney General Eric H. Holder, Jr. to all U.S. Dep't of Justice Employees re "Approval for Participation in Outside Organizations and Activities by Department of Justice Employees," p. 1, (May 19, 2000), http://www.justice.gov/jmd/us-department-justice-0 (last visited February 23, 2015)

[9] *See* United States Office of Government Ethics, Outside Employment Limitations, http://www.oge.gov/Topics/Outside-Employment-and-Activities/Outside-Employment-Limitations/ (last visited February 23, 2015); *see also* 5 C.F.R. §§ 2635.801 – 2635.803 (2015); Ethics and Professionalism Guide for Immigration Judges, Art. XVII.

[10] *See* 5 C.F.R. § 2635.803 (2015).

The EOIR's use of blanket recusal orders against immigration judges, based on a judge's national origin or involvement in outside activities and organizations that may be related thereto, sets a very dangerous precedent and threatens the integrity of the immigration courts as a whole.

An order directing an immigration judge to recuse himself/herself from *all* cases involving individuals whose national origin is the same as his or hers, as is case with Judge Tabaddor, necessarily presumes that the immigration judge to whom the order is directed cannot be impartial and fair when one of the parties appearing before him/her is of the same national origin/ethnic heritage as the judge. This presumption has very significant and adverse ramifications for the integrity of the immigration courts.

For example, in the case of Judge Tabaddor, this presumption leads to the conclusion that the government cannot get a fair hearing before Judge Tabaddor in cases involving Iranian nationals because she will *always* favor the person(s) with whom she shares a common ethnic bond. Obviously, the perception that a judge cannot be fair and impartial in cases coming before him/her calls into question the integrity of the entire immigration court system.

Moreover, the presumption that an immigration judge who is subject to an EOIR blanket recusal order, such as Judge Tabaddor, cannot be fair and impartial is unlikely to be limited to those cases in which the judge is of the same national origin as one or more of the litigants. On the contrary, it is more probable that any party coming before that judge (as well as the general public) would reasonably conclude that such judge might not be fair and impartial in their case as well. After all, if a judge cannot be fair and impartial in some cases, why should one assume that the judge will be fair and impartial in every other case coming before him/her?

Further contributing to this problem is the fact that the presumption arising from the EOIR's use of blanket recusal orders – i.e., that immigration judges cannot be fair or impartial in cases where one or more of the litigants is of the same national origin as the judge – may not be limited in the minds of parties to immigration proceedings and the public at large to those judges under a blanket recusal order. For example, the erroneous presumption created by the blanket recusal order to Judge Tabaddor – that she cannot be impartial in cases involving Iranian nationals – might be extended to an immigration judge of Mexican heritage adjudicating cases involving Mexican nationals, even though that judge is not subject to a blanket recusal order. Indeed, there is no reason for persons appearing in immigration court and the public to conclude otherwise.

It is ironic that the EOIR would view its indiscriminant use of a blanket recusal order based upon national origin as a measure by which to protect the integrity of the immigration court system. Exactly the opposite is true. The fallacious presumption of a lack of fairness and impartiality resulting from a blanket recusal order leads to just one conclusion – virtually no immigration judge, despite his/her sworn oath to do so, can be fair and impartial in all of the cases he/she hears, particularly in those matters in which the judge is of the same national origin/ethnic heritage as one or more of the parties. This viewpoint, if adopted by parties appearing in immigration courts and the general public, would completely eviscerate the integrity of the immigration court system.

There is no reason to believe that the EOIR's use of blanket recusal orders will be limited to matters involving an immigration judge's national origin/ethnic heritage. Indeed, the EOIR's arbitrary imposition of blanket recusal orders based upon national origin is a very slippery slope. The EOIR could easily expand this practice to include just about any personal attribute or interest of an immigration judge, including religion, socio-economic background, disability, education,

gender, sexual orientation, etc., and the judge's involvement in outside organizations and activities related to such attributes/interests.

For this reason, the EOIR's use of blanket recusal orders poses a serious threat to the independence of the immigration court's judiciary. 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.

Each and every step down this slippery slope will add to and strengthen the perception in the mind of parties to immigration proceedings and the public at large that immigration judges cannot be fair and impartial in some, if not all, of their cases, thereby further compromising the integrity and efficacy of the immigration court system in this country.

IV. CONCLUSION

The NAIJ urges this Court to consider the broad implications of the EOIR's actions, if allowed to stand. Our members should enjoy their rights to fully participate in society without the fear of retribution, all the while in a manner consistent with the dignity and impartiality demanded of their judicial positions. The necessary protections are already captured in the laws that apply to recusals and in our protections of free speech. We simply ask that the EOIR be made to comply with them.

Dated: February 23, 2015

LIM, RUGER & KIM, LLP
Bryan King Sheldon
Sandra Sakamoto
Mark T. Hansen

By: _____
Bryan King Sheldon
Attorneys for The National Association of Immigration Judges As *Amicus Curiae*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

AFSANEH ASHLEY TABADDOR, Plaintiff, v. ERIC HOLDER, JR., in his official capacity as Attorney General of the United States; JEFFREY A. ROSENBLUM, in his official capacity as General Counsel, Executive Office for Immigration Review (EOIR); THOMAS Y.K. FONG, in his official capacity as Assistant Chief Immigration Judge, EOIR; MARLENE M. WAHOWIAK, in her official capacity as Associate General Counsel, EOIR; U.S.	Case No. 2:14-cv-6309-GW-CW **[PROPOSED] ORDER RE APPLICATION OF THE NATIONAL ASSOCIATION OF IMMIGRATION JUDGES TO PARTICIPATE IN THIS CASE AS *AMICUS CURIAE***

LIM, RUGER & KIM, LLP

DEPARTMENT OF JUSTICE; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; OFFICE OF THE GENERAL COUNSEL; OFFICE OF THE CHIEF IMMIGRATION JUDGE,

Defendants.

IT IS HEREBY ORDERED that the application of The National Association of Immigration Judges to participate in this case as *amicus curiae* is GRANTED and the proposed brief submitted with the application is deemed filed.

Dated:

Judge George H. Wu
U.S. District Judge