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VIA FEDEX
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September 4, 2013

Ms. Tanya L. Wright
Chief, Complaints Processing
Office of Equal Employment Opportunity
Crystal Square 4, Suite 1102
United States Marshals Service
2604 Jefferson Davis Highway
Alexandria, Virginia 22301-1025

RE: EEO Complaint of Hon. Judge A. Ashley Tabaddor, Complaint Docket No. EOI-2013-0081, Request for Final Agency Decision

Dear Ms. Wright:

Enclosed please find the original, executed form request for an immediate Final Agency Decision provided by your office and received, together with the applicable Report of Investigation ("ROI"), by our office on August 5, 2013.

Having had the opportunity to review the ROI, a number of undisputed facts supporting Judge Tabaddor's discrimination and reprisal causes of action, in addition to the documents and testimony provided by Judge Tabaddor, are apparent.¹ Below is a short summary of material undisputed facts to assist in issuance of a final agency decision.

Discrimination on Account of National Origin, Race and Religion

- Judge Tabaddor was ordered by the Executive Office of Immigration Review ("EOIR or "Agency") to recuse herself in a wholesale fashion from all cases involving individuals from Iran. Judge Tabaddor's immediate supervisor, Assistant Chief Immigration Judge ("ACIJ") Thomas Fong ("Fong"), made clear in his affidavits that the Agency ordered Judge Tabaddor's recusal, and he directed implementation of that order. [ROI, Exhibit 9, at p. 3 (Question 8), p. 13; Exhibit 9.1, at p. 14.] It is further clear that, presently, Judge Tabaddor is subject to the recusal order in perpetuity and continues to be singled out in her treatment vis-à-vis other Immigration Judges who are randomly assigned cases. [*Id.*, at p. 14-15.]
- This continuing adverse action against Judge Tabaddor is unprecedented. The Agency has not ordered any other Immigration Judge to recuse himself/herself from all cases involving individuals of a particular national origin or race. [See Affidavit of Jeff

¹ The following summary is not and is not intended to be a waiver of any allegation of fact or law by Judge Tabaddor. Judge Tabaddor reserves all rights to raise any claim, engage in discovery or otherwise take any action allowable by law in connection with the matters addressed herein.

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Rosenblum² ("Rosenblum"), Exhibit 8, at p. 3 (Question 6), p. 9 (Question 22); Affidavit of Fong, Exhibit 9, at p. 3 (Question 6), p. 4 (Question 13), p. 7 (Question 28); Affidavit of Charles Smith ("Smith"), Exhibit 10, at p. 2 (Question 6), p. 4 (Question 13), p. 7 (Question 28); Affidavit of Marlene Wahowiak ("Wahowiak"), Exhibit 11, at p. 6 (Question 22); Affidavit of Nina Elliot ("Elliot"), Exhibit 12, at p. 2 (Question 6), p. 4 (Question 13), p. 6 (Question 28); Affidavit of JuanCarlos Hunt ("Hunt"), Exhibit 14, at p. 2 (Question 6), p. 5 (Question 13), p. 7 (Question 23).]

- Further to this point, by ACIJ Fong's account, recusal decisions are made on an individualized case-by-case basis at the instigation of a litigant involved (by way of motion) or an Immigration Judge himself/herself. [Affidavit of Fong, Exhibit 9, p. 4 (Question 13), p. 14 (Questions 4-6).] Thus, Judge Tabaddor is being prevented from exercising her right and privilege as an Immigration Judge to use her independent judgment to objectively determine whether to recuse herself from cases as required by Agency rules and regulations, and is being held to different recusal and disqualification standards and procedures than other Agency employees including other Immigration Judges.
- There is no allegation, yet alone any evidence, that Judge Tabaddor's performance of her duties as an Immigration Judge have ever been negatively impacted by her participation in a variety of outside volunteer and professional activities. [See Affidavit of Fong, Exhibit 9, at p. 6 (Question 21); see *also* Affidavit of Rosenblum, Exhibit 8, at p. 8 (Question 14).]
- The Agency continues to rely on 5 C.F.R. § 2635.502 as the basis for the recusal order, but the section is facially inapplicable and is pretext for discrimination on account of Judge Tabaddor's race, national origin and religion. [See Affidavit of Rosenblum, Exhibit 8, at p. 3 (Question 7).] In fact, JuanCarlos Hunt, the Deputy Designated Agency Ethics Official ("DDAEO") at the time the recusal order was issued, was not even consulted in the Agency's decision as he should have been. [Affidavit of Hunt, Exhibit 14, at p. 3 (Question 7).] Mr. Hunt made clear that the Agency's reliance on 5 C.F.R. § 2635.502 lacks merit and further, that the recusal order never should have been issued, as it is facially discriminatory. [*Id.*, at p. 3 (Question 8); p. 8 (Question 29).]
- The Agency's failure to apply a uniform standard in issuing the recusal order and failure to uniformly apply the procedures relevant to Immigration Judge recusal is further evidenced by the Agency's failure to follow its own internal ethics procedures. Even as an acting ethics officer, Rosenblum, who issued the recusal order then implemented by ACIJ Fong, should have consulted with Hunt, as DDAEO, before any action beyond review of a routine outside event request was taken. [*Id.*, at p. 4 (Question 11).] This is particularly so where Rosenblum was in a position of conflict. [*Id.*; see *also* Unsolicited Affidavit of Kathleen Silbaugh ("Silbaugh"), Exhibit 15, at p. 1-2.] Further, after Judge

² Rosenblum's admission on this point contradicts his earlier representation to Judge Tabaddor that "OGC has formally recommended that other IJs disqualify themselves from a particular class of matters in similar circumstances." [Exhibit 7.2, at p. 4.]



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Tabaddor protested the recusal order; Rosenblum inaccurately represented that the recusal order was not subject to reconsideration. [Affidavit of Hunt, at p. 6 (Question 17); see *also* Affidavit of Smith, Exhibit 10, at p. 5 (Question 18); Affidavit of Elliot, Exhibit 12, at p. 4-5 (Question 18).]

- Judge Tabaddor's national origin, race and religion, as well as her association with groups whose members identify with these characteristics are the sole and/or motivating reasons for the Agency's recusal order. Not only was Judge Tabaddor's association with the Iranian-American community cited by Rosenblum as the basis for the Agency's recusal order, see Exhibit 7.1 (at p. 2), but affidavits by others in the Agency show that the recusal order was based on Judge Tabaddor being of Iranian descent as well as the number of internet search results from use of the terms "Ashley Tabaddor" and "Iran." [Affidavit of Silbaugh, Exhibit 25, at p. 2 (explaining that Rosenblum presented the recusal issue as "including that the Immigration Judge (IJ) Tabaddor is Iranian, and she was going to speak at a White House event about issues specific to the Iranian community.")³; Affidavit of Wahowiak, Exhibit 11, at p. 3-4 (Questions 7, 9).]

Reprisal Discrimination

- The Agency cannot prevent any basis for its restriction in Judge Tabaddor's participation in outside activities after protesting the discriminatory recusal order. [See Affidavit of Judge Tabaddor, Exhibit 7, at p. 14-15.⁴] In particular, there is no explanation for the Agency's restriction in Judge Tabaddor's use of her title in connection with the same outside activities for which she had been allowed to utilize her title with a disclaimer prior to protesting the recusal order.
- Ms. Wahowiak, as Associate General Counsel having worked in the Office of Professional Responsibility for the Department Justice, testified that Agency practice is to allow Immigration Judges to use their title with a disclaimer when appearing at outside events in their personal capacity. [Affidavit of Wahowiak, Exhibit 11, at p. 6 (Question 18).] Judge Tabaddor's outside engagement requests have not been treated under this practice since her protestation of the recusal order, in the same fashion as they were before her protestation of the recusal order.

Relief Sought

In light of the foregoing, Judge Tabaddor reiterates her request for corrective action to be taken, including, without limitation, the following remedies in connection with her claims for discrimination and reprisal:

³ Rosenblum's characterization of Judge Tabaddor as "speaking" at a White House event is notably misleading. Judge Tabaddor's request was to attend an event at the White House, not appear as a speaker. [See, e.g., Exhibit 7.1.]

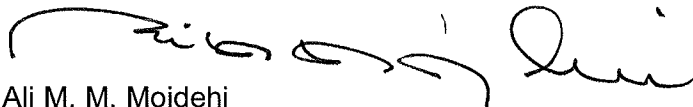
⁴ It appears that the ROI does not include certain documents submitted by Judge Tabaddor in connection with her complaint and affidavit. Judge Tabaddor requests that all documents submitted to the EEO in connection with her complaint be included in the record.

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- An order reversing the Agency's order that she recuse herself from all cases involving respondents from Iran, and permitting her to exercise her independent judgment to decide whether or not to recuse herself from individual cases;
- An order requiring the Agency to send a Notice to all parties who received a recusal order from Judge Tabaddor stating that the decision that Judge Tabaddor recuse from their case was decided in error;
- Damages for emotional distress caused by the Agency's discrimination on account of national origin, race and religion, and reprisal;
- Costs and attorneys' fees;
- Mandatory training on the Agency's EEO policies and procedures including training on the non-discriminatory and non-retaliatory application of Agency ethics rules and regulations for all employees and supervisors in the Agency's OGC, including all Ethics Officers and other employees designated to issue ethics guidance;
- Mandatory review of EOIR policies, procedures and training of supervisors and employees to determine if they comply with Agency EEO policies and procedures as well as federal laws prohibiting discrimination and reprisal in the workplace; determination of the reasons these policies, procedures and laws were not followed in this case and requiring corrective action to ensure that any future non-compliance is reported and stopped immediately; preparation of a written report of the review and determination with copies to the Director of EOIR and Judge Tabaddor; and
- Any other remedies available under any applicable law, including but not limited to Title VII and Agency EEO rules and regulations.

Sincerely,

Cooley LLP



Ali M. M. Mojdehi

Enclosure

cc: Patrick Anderson (via email (Patrick.Anderson@usdoj.gov))
A. Ashley Tabaddor (via email)
Marcus Williams (via FedEx)
EEO Officer
Office of Equal Employment Opportunity
Crystal Square 4, Suite 1102
United States Marshals Service
2604 Jefferson Davis Highway
Alexandria, Virginia 22301-1025

Immediate Final Agency Decision/Withdrawal Form

Ms. Tanya L. Wright
Chief, Complaints Processing
Office of Equal Employment Opportunity
Crystal Square 4, Suite 1102
United States Marshals Service
2604 Jefferson Davis Highway
Alexandria, Virginia 22301-1025

**Re: EEO Complaint of A. Ashley Tabbador
Complaint Docket No. EOI-2013-00081**


Dear Ms. Wright:

This is to acknowledge receipt of the Report of Investigation (ROI) in the above-referenced discrimination complaint. Based on my review of the ROI, I have decided to:

(check only one)

- Request an immediate Final Agency Decision by the Complaint Adjudication Officer (CAO), Department of Justice, pursuant to 29 CFR §1614.110.
- Withdraw my complaint. In selecting this option, I certify that I have not been coerced or pressured into withdrawing my complaint and understand that by withdrawing this complaint, the agency will administratively close my file and will take no further action.

Sincerely,


(Signature of Complainant or Representative)

Date: 9/4/13