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Should Shared Ancestry Force A Judge's Recusal?

January 24, 2015 8:42 AM ET



Richard Gonzales
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An Iranian-American immigration judge is suing the Department of Justice over its requirement that she not hear cases involving Iranians.

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SCOTT SIMON, HOST:

Now to an unusual case of an immigration judge who was suing the U.S. Department of Justice, alleging discrimination. The judge is of Iranian descent and she says her superiors ordered her not to hear any cases that involved Iranian nationals. NPR's Richard Gonzales reports.

RICHARD GONZALES, BYLINE: Immigration Judge A. Ashley Tabaddor has been hearing immigration cases since 2005. In her lawsuit, she says her troubles began three years ago when she was invited to a White House meeting with Iranian-American community leaders. She asked her supervisors for permission to attend and they approved, but they also recommended that if she went she recuse herself from all

immigration cases involving Iranians. When she returned from Washington, Tabaddor says the recommended recusal became an official order. That move sparked outrage among fellow immigration judges who say it violates Tabaddor's First Amendment rights.

DANA LEIGH MARKS: And we do believe that this appears to be discriminatory based on her Iranian heritage.

GONZALES: Dana Leigh Marks is the president of the National Association of Immigration Judges. There's an ongoing rift between the government and immigration judges who say they don't have the same autonomy as other federal judges. They're employed by the Justice Department and the judges feel that compromises their independence.

MARKS: A judge should not have a supervisor who can tell them how to act in a given case.

GONZALES: In fact, Mark says the Department of Justice requires her to say that she's speaking for the Association and not the government. Typically, immigration judges are randomly assigned cases. Sometimes the parties will ask that a judge recuse him or herself if they suspect a conflict of interest or bias. According to Judge Tabaddor's lawsuit, no one has accused her of bias. Instead, Justice Department officials were concerned with the appearance of impropriety. This case has intrigued legal observers.

IRA KURZBAN: It's quite odd.

GONZALES: Attorney Ira Kurzban teaches at the University of Miami. He literally wrote the book on immigration laws, and he says he's surprised by the scope of the Justice Department's action.

KURZBAN: I have never heard of a case of a recusal of a judge on this basis, across the board.

GONZALES: Kurzban says by the same logic, the Justice Department would have to order African-American judges not to hear cases involving people from Africa or the Caribbean. Or a Jewish judge would be barred from hearing cases involving Israelis. Ali Mojdehi is Judge Tabaddor's attorney.

ALI MOJDEHI: What is most troubling is that the Department of Justice policies itself. The Department of Justice encourages employees, as it should, to be active in the community.

GONZALES: The Department of Justice has moved to have Judge Tabaddor's discrimination claim dismissed. It argues that because the judge is a civil servant the court has no jurisdiction over her discrimination suit. The government also says Judge Tabaddor failed to file her complaint within the time period required by the civil service law. A spokeswoman at the Justice Department declined comment on the lawsuit or the government's motion to dismiss it. A court hearing has been set for mid-March. Richard Gonzales, NPR News.

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