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DOJ Thumbs Its Nose At Immigration Judge's Bias Case

By **Allissa Wickham**

Law360, New York (April 02, 2015, 6:01 PM ET) -- The U.S. Department of Justice tore into an Iranian-American immigration judge's bid to keep her discrimination and free speech case alive in California federal court on Wednesday, claiming the judge had danced around key jurisdictional issues and hadn't exhausted her bias claim in timely fashion.

In a sharp-tongued reply, the DOJ accused Los Angeles-based immigration judge Afsaneh Ashley Tabaddor of focusing on the merits of her case far too early in the litigation, in an attempt to "divert" the court's attention from important jurisdictional matters tied to its ability to hear the case.

"When plaintiff does get around to addressing these questions, her arguments are unconvincing," the Justice Department said.

Tabaddor, who **launched her suit** last August, has accused the DOJ of discriminating against her when it ordered her to recuse herself from all cases involving people from Iran. The suit also alleges that the DOJ, Attorney General Eric Holder and others trampled on Tabaddor's First Amendment rights by enforcing a policy that curbs the judge's speech outside of work.

According to the complaint, the trouble started when she sought time off to attend a White House roundtable with leaders in the Iranian-American community.

The DOJ Executive Office for Immigration Review's general counsel at the time, Jeffrey Rosenblum, subsequently recommended that Judge Tabaddor recuse herself from handling any cases involving Iranian nationals, since her roundtable invitation gave rise to an appearance of impropriety, the suit said.

That recommendation was allegedly bumped up to an order after she attended the event, and Judge Tabaddor eventually issued recusal orders in eight cases, according to her amended complaint. Her suit claims that the DOJ "singled out" the judge, and that on its face, the recusal order was based on her race and association with Iranian-Americans.

In its January dismissal motion, however, the DOJ claimed that all of Tabaddor's claims should be dismissed, arguing that the court doesn't have jurisdiction over the judge's constitutional claims, since they're precluded by the Civil Service Reform Act.

"The Supreme Court has held that the remedies established by the CSRA are the exclusive means of redressing employment disputes involving federal employees, even when such disputes are styled as constitutional claims," the department said.

Her discrimination claim should also be chucked because Tabaddor failed to administratively exhaust it in a timely manner, and she hadn't presented enough facts to dodge a dismissal order, the DOJ said.

Tabaddor responded in February that the DOJ had relied on "strained technical arguments" in its dismissal motion in an attempt to duck having to respond to the issues at hand.

"Defendants' motion, in substantial part, argues that their continuing discriminatory and unconstitutional conduct should forever evade review by any Article III court, leaving the Justice Department free to flout the law," Tabaddor said.

An unamused Justice Department responded on Monday by doubling down on its CSRA argument and claiming that Tabaddor hadn't exhausted her claim in an appropriate time frame, because she failed to consult with a U.S. Equal Employment Opportunity counselor within 45 days of the initial recusal recommendation.

Ali M.M. Mojdehi, an attorney for Tabaddor, told Law360 on Thursday that the DOJ "continues to endorse its imposition of an overtly race-based classification system for the recusal and assignment of immigration cases, asserting that Judge Tabaddor's complaint amounts to nothing more than a 'minor' injury unworthy of review by the district court."

"Judge Tabaddor and the numerous amici curiae who filed briefs in support of her complaint see the Department's actions very differently — as a grave injustice that cannot be swept under the rug," Mojdehi said in an email. "The harm resulting to Judge Tabaddor from the unlawful recusal order is actual, material and continuing."

The DOJ's brief comes roughly a month after the National Association of Immigration Judges **blasted** the recusal order, telling the court that it strikes at the integrity of the immigration court system.

A representative for the DOJ did not reply to a request for comment Thursday afternoon, while an attorney for Tabaddor was not immediately available to comment.

Tabaddor 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 case is Tabaddor v. Holder et al., case number 2:14-cv-06309, in the U.S. District Court for the Central District of California.

--Additional reporting by Vin Gurrieri. Editing by Kat Laskowski.

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