

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

ESTATE OF IBRAGIM TODASHEV,

Plaintiff,

v.

Case No: 6:17-cv-919-Orl-41DCI

**UNITED STATES OF AMERICA,
AARON MCFARLANE,
CHRISTOPHER JOHN SAVARD,
CURTIS CINELLI and JOEL GAGNE,**

Defendants.

ORDER

On May 22, 2017, Plaintiff (the Estate of Ibragim Todashev, by Hassan Shibly, as Personal Representative of the Estate of Ibragim Todashev) filed an action against the United States of America, FBI Special Agent Aaron McFarlane, FBI Task Force Officer Christopher Savard, Massachusetts State Police Sergeant Joel Gagne, and Massachusetts State Police Trooper Curtis Cinelli. At the time of the alleged conduct giving rise to the Complaint, Defendant Savard was an Orlando Police Department Officer and a FBI Task Force Officer assigned to the FBI Joint Terrorism Task Force in the Orlando FBI Office (hereafter the Orlando JTTF). Doc. 1. At the time of the alleged conduct giving rise to the Complaint, it is also alleged that Defendant Savard was investigating Ibragim Todashev in Defendant Savard's role as a FBI Task Force Officer on the Orlando JTTF. *Id.*

On October 31, 2017, the undersigned *sua sponte* noticed a hearing in this case. Doc. 28. The Notice of Hearing directed as follows: "The government shall be prepared to confirm whether or not the assigned United States Magistrate Judge had any actual involvement related to this

matter; the Court is unaware of any such involvement, but would like the government to be prepared to discuss this matter.” *Id.* To be sure, the undersigned: (1) wanted to make Plaintiff aware that the undersigned had worked with the Orlando JTTF and with Defendant Savard; and (2) wanted the government to confirm that the undersigned had no actual involvement in any investigation of Ibragim Todashev – something the undersigned is aware that the government can verify by searching its case management and assignment systems and by consulting with supervisory Assistant United States Attorneys. In sum, before this case moved much further along, the undersigned wanted to address directly any potential facts that may warrant, or result in a request for, recusal.

On November 2, 2017, the undersigned held the hearing. Doc. 31. As stated on the record, the purpose of the hearing was to ensure that Plaintiff was aware that the undersigned, prior to taking the bench, served as an Assistant United States Attorney who, in 2011 and 2012, worked with the Orlando JTTF and, from August 2015 to October 2016, worked as a supervisory Assistant United States Attorney who worked with the Orlando JTTF.¹ The undersigned also informed Plaintiff that, in those roles, the undersigned had worked with Defendant Savard, who at the time was a FBI Task Force Officer with the Orlando JTTF. That said, the undersigned also informed Plaintiff that the undersigned had not worked on any investigation involving Ibragim Todashev. As requested, the government was prepared to discuss any such involvement by the undersigned, and confirmed that the undersigned had no actual involvement in any investigation involving Ibragim Todashev. Further, the alleged conduct giving rise to the Complaint occurred in April 2013, at a time when the undersigned was not assigned to work with the Orlando JTTF. At the

¹ The undersigned notes that much of this information is also available on the Court’s publicly available website. *See* <http://www.flmd.uscourts.gov/judicialInfo/Orlando/JgIrick.htm>.

hearing, Plaintiff made no request for recusal. Nonetheless, the Court requested that if Plaintiff intended to file a motion for recusal, that it be filed within 30 days.

On November 26, 2017, Plaintiff filed a motion to recuse United States District Judge Carlos E. Mendoza – the assigned United States District Judge – on the basis that Judge Mendoza’s prior service working with the Orlando JTTF created bias that necessitated recusal. Doc. 38. That motion failed to comply with Local Rule 3.01(g). *Id.* The motion was supported by the sworn affidavit filed by an attorney in this case – Tark R. Aoudi – claiming that Judge Mendoza must recuse himself. Doc. 38-1.

The next day, Plaintiff filed a motion to recuse the undersigned. Doc. 39. This second motion appears to be the same filing as the motion seeking Judge Mendoza’s recusal, but substituting the undersigned’s name for Judge Mendoza’s. *Id.* The motion fails to comply with Local Rule 3.01(g). *Id.* This time, Mr. Aoudi stated in a sworn affidavit that the undersigned must be recused. Doc. 39-1.

As grounds for recusal, Plaintiff asserted that the undersigned “stated that he served on an anti-terrorism taskforce after Sept 11th.” *Id.* at 3. Plaintiff argued that:

Because this case undoubtedly involves the government employee’s profiling of Todashev as a ‘terrorist’ and their overzealous and deathly actions to deal with same, Magistrate Judge Irick’s involvement with an anti-terrorism task force could prove to be biased and could hinder him from dealing fairly with this Plaintiff.

The comment made at the hearing, is disturbing to the Plaintiff as it appears to evidences [sic] bias and partiality which leads the Plaintiff to seek disqualification.

*Id.*² Plaintiff went on to argue that: “An objective observer would entertain significant doubt as to the Honorable Magistrate Judge Daniel C. Irick’s impartiality due to his participation in an anti-

² The undersigned assumes that the “comment made at the hearing” was, in fact, one of the primary purposes of the hearing: the statements by the Court informing Plaintiff that the undersigned had worked with the Orlando JTTF and with Defendant Savard. There is no other indication in the

terrorism task force as he stated during the recent hearing.” *Id.* at 6. Mr. Tark’s affidavit echoes these conclusory assertions. Doc. 39-1.

The motion seeking Judge Mendoza’s recusal is due to be denied as moot given the subsequent filing of the motion substituting the undersigned’s name in place of Judge Mendoza’s name. Mr. Tark, who is a member of the Bar of this Court, should exercise more care in making sworn factual declarations to this Court.

As to the motion seeking recusal of the undersigned, it is due to be denied for several reasons. First, it fails to comply with the Local Rules of this Court. *See* Local Rule 3.01(g). Second, it fails to cite to any controlling law from this Circuit. Third, the factual allegations and legal arguments within the motion are conclusory and without support. Fourth, the underlying premise of the motion is so entirely without merit that it defies logic. Indeed, the bald assertion that the undersigned’s impartiality might reasonably be questioned because this case involves allegations of “terrorism” and the undersigned, as an Assistant United States Attorney, worked with a joint terrorism task force is meritless. The fact that the undersigned worked with a joint terrorism task force is not evidence of bias against any person, and no reasonable person would question the impartiality of the undersigned, or anyone else, on that basis.³ Thus, the undersigned finds that the affidavit of Mr. Tark is not sufficient as set forth in 28 U.S.C. § 144, and that there is no basis for mandatory recusal pursuant to 28 U.S.C. § 455(a) or the first clause of (b)(1).

motion as to what “comment” Plaintiff references. Further, while the undersigned provided the dates that the undersigned served in various roles at the United States Attorney’s Office, these dates were not otherwise described as being “after September 11th,” which the undersigned takes as a reference to the terrorist attacks of September 11, 2001.

³ Such a generalized argument divorced from any specific factual or legal basis could be seen as an affront to the diverse men and women of all backgrounds – including all ethnic, cultural, racial, socio-economic, religious, and political backgrounds – who have served honorably on, and assisted as community partners to, those task forces.

Accordingly, it is **ORDERED** that the motion to recuse Judge Mendoza (Doc. 38) is **DENIED** as moot and the motion to recuse the undersigned is **DENIED** (Doc. 39).

However, upon further, *sua sponte* consideration, the undersigned finds that recusal is appropriate for another reason. The undersigned's prior work as an Assistant United States Attorney on terrorism-related investigations with Defendant Savard in Defendant Savard's role as a FBI Task Force Agent on the Orlando JTTF – in combination with (a) the fact that the Complaint makes allegations concerning the nature of Defendant Savard's investigatory work in his role as a FBI Task Force Agent on the Orlando JTTF and (b) the fact of the temporal proximity of the undersigned's work with the Orlando JTTF, both before and after the alleged conduct that is the subject of the Complaint – has the potential to raise reasonable concerns in relation to whether or not the undersigned may have acquired personal knowledge specifically related to Defendant Savard's investigatory work in relation to Defendant Savard's role as a FBI Task Force Agent on the Orlando JTTF that would constitute “personal knowledge of disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(b)(1). The undersigned notes that this was not a basis for recusal argued in Plaintiff's motion. *See* Doc. 39. Accordingly, in an abundance of caution, and without endorsing the legal conclusions or factual assertions contained in Plaintiff's motion or Mr. Tark's affidavit, the undersigned finds that recusal is appropriate in this case pursuant to the second clause of § 455(b)(1). Thus, **the Clerk is directed to assign this matter to another United States Magistrate Judge.**

DONE AND ORDERED in Orlando, Florida on November 28, 2017.



DANIEL C. IRICK
UNITES STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties