



U.S. Department of Justice

Justice Management Division

Human Resources Staff

Washington, D.C. 20530

August 9, 2019

Judge Afsaneh Ashley Tabaddor
President, NAIJ
c/o Los Angeles Immigration Court
606 S. Olive Street, 15th Floor
Los Angeles, CA 90014

Dear Judge Tabaddor:

Attached is a representation petition filed today by the Department of Justice with the Federal Labor Relations Authority, requesting a clarification of unit for an Executive Office for Immigration Review (EOIR) bargaining unit. The appropriate points of contact are listed on the addendum to the petition.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Eric S. Daniels".

Eric S. Daniels
Assistant Director for Labor and Employment Law



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

PETITION

Date Filed

FOR FLRA USE ONLY

Case No.

See instructions on the back of this form. Attach additional sheets if needed, numbered according to the item to which they pertain. By signing the petition form, a labor organization/petitioner certifies it has submitted to the agency or activity and to the Department of Labor a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

1. Clear and concise statement of the purpose of the petition and the issues raised by the petition.

Pursuant to 5 USC 7111(b)(2), clarify and determine that the bargaining unit of immigration judges (IJs) is inappropriate because IJs are management officials under to 5 USC 7103(a)(11). Accordingly, IJs should be precluded from forming or joining a labor organization. This is necessary based on recent developments in the nature of the IJ position. See Addendum for additional info.

2. Description of the unit(s):

Included: All IJs employed by EOIR throughout the United States and its territories, including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands

Excluded: All categories of employees described in 5 U.S.C. § 7112(b)

3. Approximate number of employees in the unit(s) affected by issues raised in the petition.

Currently: 404

Proposed:

4. If seeking an election, the petition is supported by:

___ a showing of interest of not less than 30%

5. PETITIONER (full name of person, labor organization, or agency) U.S. Department of Justice

Address (Street, Number, City, State, & ZIP Code) 950 Pennsylvania Avenue, NW, Washington, DC 20503

Petitioner Contact (Name and Title) See Addendum

Telephone No.

Cell No.

Fax No.

Email Address

Petitioner Contact Address (if different than above)

6. AGENCY: Name of Agency affected by the petition (add attachment if more than one agency). Skip this section if same as Petitioner.

Executive Office for Immigration Review

Address (Street, Number, City, State, & ZIP Code)

Agency Contact (Name and Title) See Addendum

Telephone No.

Cell No.

Fax No.

Email Address

Agency Contact Address (if different than above)

7. LABOR ORGANIZATION: Name of Labor Organization affected by the petition (include local no. and affiliation, add attachment if more than one labor organization). Skip this section if same as Petitioner.

National Association of Immigration Judges, IFPTE Judicial Council 2

Address (Street, Number, City, State, & ZIP Code) c/o Los Angeles Imm. Court, 606 S. Olive Street, Floor 15, Los Angeles, CA 90014

Labor Organization Contact (Name and Title) A. Ashley Tabaddor

Telephone No. 310-709-3580

Cell No.

Fax No.

Email Address

Labor Organization Contact Address (if different than above)

8a. Date(s) of Recognition/Certification (ex. 01/30/2000) of any unit(s) affected by issues raised in the petition. 05/19/1979

8b. Expiration of Current Agreement(s) (ex. 01/30/2000) covering any unit(s) affected by issues raised in the petition.

9. I declare that I have read this petition and that the statements in it are true to the best of my knowledge and belief. I understand that making willfully false statements can be punished by fine and imprisonment, 18 U.S.C., 1001. This petition was served on all parties known to be affected by issues raised in this petition.

Lee J. Lofthus Asst. Atty. Gen. for Admin.

Type or Print Your Name and Title

Your Signature

Date

OVERVIEW: Use this form to file a petition pursuant to Sections 7111, 7112 and 7115 of the Federal Service Labor-Management Relations Statute. You are encouraged to file a petition electronically using the eFiling system on the Federal Labor Relations Authority's (FLRA) website, www.flra.gov. Please only submit your petition once using one filing method (eFile, fax, or mail). You must file your petition with the appropriate FLRA Regional Office. Visit www.flra.gov for the locations and contact information for the Regional Office nearest to you.

Submit your petition along with a statement of any relevant facts not contained in the petition and a copy of all relevant correspondence relating to matters raised by the petition. If additional space is needed in the form, you may attach additional sheets numbered according to the item to which they pertain. **You must file with any petition seeking an election or determination for dues allotment a showing of interest and alphabetical list of names constituting the showing.** Do not provide a copy of the showing of interest and alphabetical list of names to any other party. You must serve a copy of the petition and accompanying materials (except the showing of interest and list of names) on all affected parties. After your initial filing, do not submit additional documents until you have a case number to reference. Refer to the Rules and Regulations of the Federal Labor Relations Authority (FLRA), Part 2422 of 5 C.F.R., for additional information on how to file a petition.

PURPOSE OF THE PETITION AND STANDING TO FILE:

(A) Only a labor organization may file a petition to request: (1) an election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, and/or (2) a determination of eligibility for dues allotment in an appropriate unit without an exclusive representative.

(B) Only an individual may file a petition to request an election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative. You must submit with the petition a showing of interest or evidence of membership, as appropriate.

(C) An agency or a labor organization, or an agency and a labor organization jointly, may file a petition:

(1) to clarify and/or amend:

(i) a recognition or certification then in effect (for example, to change the name or affiliation of the recognized or certified exclusive representative or the name of the agency; or to resolve questions related to the eligibility of employees for inclusion in the unit); and/or

(ii) any other matter relating to representation (for example, to resolve representation questions related to a reorganization or realignment of agency operations or issues related to the majority status of the currently recognized or certified labor organization); or

(2) to consolidate two or more units, with or without an election, in an agency and for which a labor organization is the exclusive representative.

LINE BY LINE INSTRUCTIONS:

1. Provide a clear and concise statement of the purpose of the petition, the issues raised, and the results the petitioner seeks.
2. Describe the unit(s) affected by issues raised in the petition. If the petitioner is seeking an election to determine the exclusive representative of an appropriate unit of employees and/or a determination for dues allotment, the description should include the geographic location and classifications of the employees sought to be included in, or sought to be excluded from, the unit. If the petitioner is seeking an election to determine if employees no longer wish to be represented for purposes of collective bargaining by an exclusive representative or to clarify, amend or consolidate existing units, the petitioner should provide a description of the existing certification(s) or recognition(s). If more than one unit is affected, attach additional sheets.
3. State the approximate number of employees in the existing unit or the unit claimed to be appropriate; in a clarification or amendment, state the approximate number of employees in the units affected by issues raised in the petition.
4. State whether a petition seeking an election is accompanied by a showing of interest of 30% of the employees in the unit claimed to be appropriate.
5. Provide the name, mailing address and other requested information for the petitioner and the contact person. If a labor organization petitioner is affiliated with a national organization, provide the local designation and the national affiliation. If an activity or agency is affiliated with an executive department, provide the name of the department.
6. Provide the name, mailing address, and other requested information for each activity or agency, other than the petitioner, affected by issues raised in the petition. If an activity or agency is affiliated with an executive department, provide the name of the department.
7. Provide the name, mailing address, and other requested information for each labor organization, other than the petitioner, affected by issues raised in the petition. If a labor organization is affiliated with a national organization, provide the local designation and the national affiliation.
8. If the labor organization(s) named in #7 is an exclusive representative of any of the employees affected by issues raised in the petition, provide the date(s) of the recognition or certification and the date(s) any collective bargaining agreement covering the unit(s) will expire, or the most recent agreement did expire, if known.
9. Type or print the name and title of the person filing the petition. The person filing the petition must also sign and date the petition.

Addendum to Representation Petition, FLRA Form 21

Petitioner: U.S. Department of Justice

Labor Organization: National Association of Immigration Judges, IFPTE Judicial Council 2

Supplement to Box 1:

In 2000, the Authority issued a decision determining that IJs are not management officials. *EOIR and National Assoc. of Immigration Judges*, 56 F.L.R.A. 616 (2000). Subsequent factual and legal developments in the ensuing 19 years indicate that IJs should be considered management officials according to 5 U.S.C. § 7103(a)(11) and, thus, excluded from forming or joining a labor organization. Those changes include, *inter alia*: (1) changes to federal regulations that limit the scope of review of certain aspects of IJ decisions by the Board of Immigration Appeals (the Board); (2) the Board's usage of "affirmance without opinion" decisions in adjudicating appeals, making the IJ decision essentially the final agency decision; (3) the Board's usage of "adopt and affirm" procedures regarding IJ decisions and the concomitant development of federal circuit court case law that effectively reviews the IJ decision as the final agency decision; (4) an exponential increase in the number of credible fear review and reasonable fear review adjudications by immigration judges, where the IJ decision is not reviewable by the Board; and, (5) a recent decision by the Supreme Court regarding inferior officers, who "exercise significant authority pursuant to the laws of the United States." *Lucia v. SEC*, 585 U.S. ___, 138 S. Ct. 2044 (2018).

Supplement to Box 5:

Department Contact:

Eric S. Daniels
Assistant Director, Labor & Employment Law Office
Justice Management Division
145 N St, NE, Suite 9W.300
Washington, DC 20530

Phone: 202-616-3749 Fax: 202-307-0587

Primary Point of Contact:

Jill Anderson
Acting General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike
26th Floor
Falls Church VA 22041

Phone: 703-305-0470 Fax: 703-305-0443

FEDERAL LABOR RELATIONS AUTHORITY

U.S. Department of Justice
Immigration and Naturalization Service
(Activity)

and

CASE NO. 22-09576 (RO)

National Association of United States
Immigration Judges
(Petitioner)

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the undersigned Regional Director of the Federal Labor Relations Authority in accordance with the provisions of the Civil Service Reform Act of 1978, Title VII; Executive Order 11491, as amended; and the Regulations of the Assistant Secretary; and it appearing that a majority of the valid ballots has been cast for a representative for the purposes of exclusive recognition;

Pursuant to authority vested in the undersigned,

IT IS HEREBY CERTIFIED that the National Association of United Immigration Judges has been designated and selected by a majority of the employees of the above-named Activity or Agency, in the unit described below, as their representative for the purposes of exclusive recognition, and that pursuant to the Civil Service Reform Act of 1978, Title VII, 5 U.S.C. Section 7135(b) and Section 10(e) of the Executive Order 11491, as amended, the said organization is the exclusive representative of all the employees in such unit.

UNIT:

INCLUDED: All Immigration Judges employed by the Immigration and Naturalization Service throughout the United States.

EXCLUDED: All other professional and nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

FEDERAL LABOR RELATIONS AUTHORITY

Dated: May 9, 1974

Richard L. Sumner
Regional Director
Washington Regional Office

FEDERAL LABOR RELATIONS AUTHORITY

Name of Activity(ies) or Agency Immigration and Naturalization Service
 Case No. 22-09576(RO)

TALLY OF BALLOTS

The undersigned certify that the results of the tabulation of ballots cast in the election were as follows:

- 1. Approximate number of eligible voters 34
- 2. Void ballots none
- 3. Votes cast for National Association of U.S. Immigration Judges 32
(Name of labor organization) (Unit/consolidation)
- 4. Votes cast for _____
(Name of labor organization)
- 5. Votes cast for _____
(Name of labor organization)
- 6. Votes cast against (exclusive recognition) ~~(unit/consolidation)~~ -0-
- 7. Valid votes counted (sum of 3, 4, 5, and 6) 32
- 8. Challenged ballots 4
- 9. Valid votes counted plus challenged ballots (sum of 7 and 8) 36
- 10. Challenges are sufficient in number to affect the results of the election?
 Yes _____ No

11. A majority of the valid votes counted plus challenged ballots (Item 9) has ~~not~~ been cast for:
National Association of U.S. Immigration Judges
 FOR THE REGIONAL DIRECTOR
Earl J. Clark

Date issued April 25, 1979

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For: INS
Richard H. Berg
4/25/79

For: Nat. Assoc. of U.S. Immigration Judges
Earl M. Pothel

For:
Copy of Tally received
INS
Richard H. Berg
4/25/79

For:
U.S. Immigration Judges
Earl M. Pothel
4/25/79

**FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGIONAL OFFICE**

**U.S. Department of Justice
Executive Office for Immigration Review
(Agency)**

and

**National Association of Immigration Judges
IFPTE Judicial Council 2
(Union)**

CERTIFICATE OF SERVICE

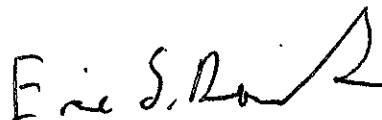
I hereby certify that the foregoing Representation Petition (Form 21) was served this 9th day of August, 2019, in the following manner:

FACSIMILE

Jessica Bartlett, Regional Director
Federal Labor Relations Authority
Washington Regional Office
1400 K Street, NW
Washington, D.C. 20424-0001

CERTIFIED MAIL - Return Receipt Requested
(Article Number 7007 3020 0000 4707 3187)

A. Ashley Tabaddor
President, NAIJ
c/o Los Angeles Immigration Court
606 S. Olive Street, 15th Floor
Los Angeles, California 90014



Eric S. Daniels
Assistant Director for Labor and Employment Law

Dated: August 9, 2019