



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

PETITION

Date Filed

08/13/2019

FOR FLRA USE ONLY

Case No.

WA-RP-19-0067

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

Lee J. Lofthus
Your Signature

8/9/2019

Date

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



NOTICE TO EMPLOYEES

FROM THE

FEDERAL LABOR RELATIONS AUTHORITY

A Petition has been filed with the Regional Director of the Federal Labor Relations Authority to determine a matter related to the representation of certain employees of the U.S. Department of Justice, Executive Office for Immigration Review.

The petition was filed by the **U.S. Department of Justice**.

The stated purpose of the petition is to clarify and determine if the bargaining unit of Immigration Judges (IJs) is inappropriate because IJs are management officials under 5 U.S.C. 7103(a)(11).

This case is being investigated and NO DETERMINATION HAS BEEN MADE AT THIS TIME by the Federal Labor Relations Authority. This Notice should be conspicuously posted for a period of ten (10) days and should not be altered, defaced, or covered by other material. Any request to intervene or cross-petition, accompanied by any necessary showing of interest, must be submitted in writing and filed with the Regional Director or the Hearing Officer prior to the opening of the hearing. If no hearing is held, a request to intervene and a cross-petition must be filed prior to action being taken by the Regional Director in accordance with section 2422.30 of the Regulations of the Federal Labor Relations Authority.

Federal Labor Relations Authority

Date of Posting: _____



Jessica Bartlett
Regional Director
Washington Regional Office
1400 K Street, NW, Second Floor
Washington, DC 20424
(202) 357-6029

Case No. WA-RP-19-0067

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE COVERED OR DEFACED.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGION**

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
(Petitioner/Agency)

and

NATIONAL ASSOCIATION OF IMMIGRATION JUDGES,
IFPTE JUDICIAL COUNCIL 2
(Labor Organization)

Case No. WA-RP-19-0067

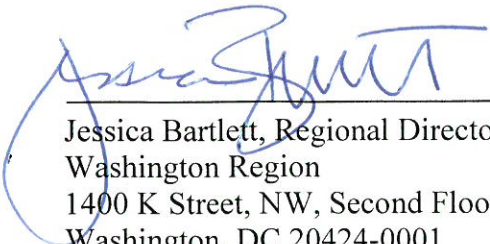
NOTICE OF REPRESENTATION HEARING

A petition was filed in this case pursuant to 5 U.S.C. § 7101-7135. The petition raises a matter relating to the representation of employees. After considering the matter, I have concluded that a hearing on the petition is warranted in this case.

YOU ARE NOTIFIED that, pursuant to Section 2422.17 of the Regulations of the Federal Labor Relations Authority, on **Tuesday, January 7, 2020**, starting at **9:00 a.m. Eastern Time**, and continuing as necessary, a hearing will take place at 1400 K Street, NW, Second Floor Agenda Room, Washington, D.C. 20424. A Hearing Officer will conduct a hearing to address the issues raised by the petition. The issues and a date establishing a Prehearing Conference are set forth in an attachment to this notice.

At the hearing, the parties will have the right to appear in person, by counsel, or other representative, to examine and cross-examine witnesses, to introduce into the record documentary and other evidence, and to enter into stipulations.

Federal Labor Relations Authority



Jessica Bartlett, Regional Director
Washington Region
1400 K Street, NW, Second Floor
Washington, DC 20424-0001

Dated: November 5, 2019