



INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS AFL-CIO & CLC

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March 13, 2024

The Honorable Kamala D. Harris
Vice President of the United States
Eisenhower Executive Office Building
1800 G Street NW
Washington, DC 20502

The Honorable Julie A. Su
Secretary of Labor, Acting
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Madam Vice President and Acting Secretary Su:

As the executive officers of the International Federation of Professional and Technical Engineers, a labor union representing upwards of 90,000 professional employees, we write to call your attention to the Department of Justice Executive Office of Immigration Review's (EOIR) applying a restrictive speaking engagement policy on the union officers of the National Association of Immigration Judges (NAIJ), an affiliate of IFPTE and effectively amounts to a gag order.

In your role as chairs of the White House Task Force on Worker Organizing and Empowerment, we seek your assistance in reversing EOIR's application of the speaking engagement policy to restrict the First Amendment rights of the officers of NAIJ, the union representing immigration judges.

For over 52 years, NAIJ has been the voice of the administrative judges adjudicating in the U.S. immigration courts. The elected leadership of NAIJ has spoken publicly to represent the interests of immigration judges, to educate the public and lawmakers on immigration adjudication, and to advocate for protecting due process, judicial independence, and fairness in the immigration courts.

However, in a February 15, 2024 email, EOIR Chief Immigration Judge Sheila McNulty instructed NAIJ President Mimi Tsankov and Executive Vice President Sam Cole to "Please consider this email formal notice that you are subject to the same policies as every EOIR employee," effectively requiring NAIJ union officers to submit public engagement requests and subjects for management vetting and review by EOIR management, even though NAIJ officers are speaking in their capacity as elected union leaders. This would apply to recent NAIJ activities, including Judge Tsankov's testimony before the Senate Judiciary Committee's Immigration, Citizenship, And Border Safety Subcommittee in October 2023, appearances in media to discuss the need for resources to address the case backlog at the immigration court, and participation on panels to discuss administrative law and due process with other adjudicators. In these capacities, NAIJ officers not only represent the view of the union's membership, they educate and inform the public, and provide lawmakers with perspectives that assist in oversight. This exemplifies how unions like NAIJ support the public interest.

The current speaking engagement policy and EOIR's directive to extend it to NAIJ officers date back to policies that were issued in September 2017 and January 2020. Under the previous administration, EOIR issued a highly restrictive speaking engagement policy to interfere with immigration judges' ability to speak in a personal capacity on immigration issues. In October

2021, under the Biden-Harris Administration, EOIR issued a revised speaking engagement policy that reverses some of the restrictive elements of the previous speaking engagement policies, but continues to restrict immigration judges from speaking in a personal capacity on immigration without vetting and supervisory approval from EOIR.

The previous administration's effort to silence the immigration judges also extended to their union. In 2019, the DOJ petitioned the Federal Labor Relations Authority (FLRA) to erroneously misclassify immigration judges as management officials in order to remove their statutory labor rights. While the FLRA rendered a poorly reasoned and, in our view, a highly politicized decision in November 2020 that removed immigration judges' collective bargaining rights, NAIJ and IFPTE have not been able to reverse the decision due to a deadlocked FLRA caused by a vacancy on the federal labor board.

EOIR's recent application of the speaking engagement policy to NAIJ is a step backward to the previous administration's approach, which conceived of the speaking engagement policy and the attack on the immigration judges' collective bargaining rights as a way to make the immigration court operations less transparent, less accountable, less fair, and entirely subject to politicization and improper interference. EOIR's current position also departs from NAIJ's history of public engagement, which started with the founding of NAIJ in 1971, eight years before NAIJ won collective bargaining rights in 1979.

EOIR is out of step with the Administration's union-friendly posture, including the Executive Orders supporting federal employee labor unions and making the federal government a model employer. The recent directive from EOIR management to NAIJ officers is not just anti-union, it also seeks to restrain the NAIJ leadership from meeting its obligations, which happen to be on issues of public interest. At a time when federal agencies and federal employee unions are developing labor-management forums under Executive Order 14119, which IFPTE wholeheartedly supports, EOIR is asserting a misguided policy that harms the agency and the public.

We ask you to engage with EOIR leadership and urge the agency to reverse course on its inappropriate and misguided application of the agency speaking engagement policy to restrict the ability of NAIJ union officers to speak publicly.

Thank you for considering our concerns and our request. Please do not hesitate to reach out to IFPTE Legislative Director Faraz Khan at 202-239-4892 or fkhan@ifpte.org should you have any questions or to follow up on our letter.

Sincerely,



Matthew S. Biggs
IFPTE President



Gay Henson
IFPTE Secretary-Treasurer

Cc:

Hon. Neera Tanden, Director, Domestic Policy Council
Hon. Kiran Ahuja, Director, Office of Personnel Management