

**SETTLEMENT AGREEMENT BETWEEN THE U.S. DEPARTMENT OF JUSTICE,
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AND THE NATIONAL
ASSOCIATION OF IMMIGRATION JUDGES**

Section 1. Background. The Department of Justice, Executive Office for Immigration Review (Agency) and National Association of Immigration Judges (Union) (*collectively*, the Parties) agree that the following constitutes a full, fair, and complete settlement and release of all claims and potential claims, as of the effective date of this Agreement including but not limited to the unfair labor practice (ULP) charges in Case Nos. WA-CA-21-0146, WA-CA-21-0147, WA-CA-21-0148, WA-CA-22-0003, and WA-CA-22-0004.

On November 2, 2020, in response to a Representation Petition filed by the Agency on August 9, 2019, the Federal Labor Relations Authority (FLRA) issued a decision stating that, “. . . IJs are management officials under § 7103(a)(11), and, therefore, are excluded from the bargaining unit pursuant to § 7112(b)(1).” 71 FLRA No. 207. In a portion of its decision entitled “Order,” the FLRA stated: “We grant the Agency’s application for review, vacate the RD’s decision, find that IJs are management officials, and direct the RD to exclude IJs from the bargaining unit.” *Id.* However, to date, the FLRA Regional Director (RD) has not issued a revocation of the Union’s recognition or certification of representative. The Union filed a Motion for Reconsideration and for Stay (pending reconsideration) with the FLRA, on November 17, 2020. The Agency opposed the motion on November 24, 2020, but on June 25, 2021, withdrew its opposition. Further, on July 19, 2021, EOIR withdrew its original Representation Petition. The FLRA has not yet ruled on the pending Motion for Reconsideration and for Stay.

On July 23, 2021, the Acting FLRA RD of the Washington Regional Office, in response to several ULPs filed by the Union, issued a consolidated complaint and notice of hearing. On November 29, 2021, the Agency filed a Motion for Summary Judgment on the grounds that, because the FLRA had issued a decision stating that Immigration Judges are management officials under § 7103(a)(11), and, therefore, are excluded from the bargaining unit pursuant to § 7112(b)(1); because the FLRA had directed the RD to exclude IJs from the bargaining unit; and because the FLRA had not granted a stay of its decision pending the motion for reconsideration or granted reconsideration of its prior ruling (*see* 5 C.F.R. § 2429.17), the Union was no longer a valid bargaining unit and lacked standing to file ULPs.

On November 30, 2021, the ALJ held a pre-hearing conference. At the conference, the ALJ stated that, in his view, the National Association of Immigration Judges remained a certified union because the certification proceeding remained pending before the FLRA given the motion for reconsideration, and the FLRA RD had not issued an official decertification order. Further, on December 1, 2021, the ALJ issued a decision denying the summary judgment motion. In this decision, the ALJ addressed the merits of the ULP dispute and stated there were remaining issues of material fact, implicitly indicating his conclusion that the Union remains a valid bargaining unit with standing to file ULPs.

On December 3, 2020, the FLRA Regional Office informed the Agency that, in its view, unit certifications control who is in a bargaining unit. The Regional Office stated that the FLRA has delegated the authority to certify bargaining units solely to the FLRA Regional Directors, and that the FLRA Regional Director issues a certification when directed by the Authority, as

provided in 5 CFR §2422.32(a)(2). The Regional Office further stated that, at this point, the Regional Director has not issued an amended certification or revocation because the matter is still pending before the Authority, and that under 5 CFR § 2422.34, while a representation issue is pending, the parties must continue to maintain existing recognitions and all that such recognitions entail. The Regional Office added that when the FLRA rules on the pending motions and issues a final decision, the RD will then act on the FLRA's Order. The Regional Office further clarified that it views the matter pending before the Authority as the Motion for Reconsideration of the Authority Decision and Order issued November 2, 2020 (71 FLRA No. 207).

Section 2. General provisions

- a) This Agreement is entered into for fair consideration extended and received, and solely for purposes of settlement in the ULP charges cited above.
- b) This Agreement does not operate as, or constitute, an admission of a violation of law, rule or regulation, or of any wrongdoing whatsoever on the part of the Agency, its employees, or its representatives.
- c) Each party will bear its own attorneys' fees and costs and waives the right to recover any such fees, except such fees as are authorized by statute as a result of the processing of grievances or arbitrations covered by paragraph 3(e) of this agreement.
- d) This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements, understanding, and representations, written or oral, between the Parties pertaining to the unfair labor practice charges. Any modifications must be in writing and agreed to and signed by both Parties.

Section 3. Subject to the provisions set forth in Sections 1 and 2 of this Agreement, and in exchange for the promises made by the Union under Section 4 of this Agreement, effective the date of this Agreement, the Agency agrees to the following:

- a) In light of the positions taken by the FLRA Regional Director, the FLRA Regional Office, and the ALJ, the Agency agrees to recognize the Union as the exclusive representative of non-supervisory Immigration Judges at the Agency, unless or until such time as the FLRA denies the Union's pending Motion for Reconsideration of the Authority's November 2, 2020 Order, and the FLRA or the FLRA Regional Director of the Washington Region (or her designee) issues a new certification or revokes the Union's recognition or certification of representative.
- b) The Agency agrees to abide by the terms and conditions of the Collective Bargaining Agreement (CBA) between the Union and the Agency, unless or until such time as the FLRA denies the Union's pending Motion for Reconsideration of the Authority's November 2, 2020 Order, and the FLRA or the FLRA Regional Director of the Washington Region (or her designee) issues a new certification or revokes the Union's recognition of representative.
- c) The Agency agrees to engage in post-implementation impact and implementation bargaining as required under 5 U.S.C. Chapter 71 (the Statute) regarding the

Administration's June 10, 2021 Memorandum "*Integrating Planning for a Safe Increased Return of Federal Employees...*," the expansion, if any, of the "enhanced case flow processing" policy, and other changes in conditions of employment implemented after November 2, 2020, which the Agency is required by the Statute to bargain. The Union will provide the Agency with a proposed list of changes in conditions of employment they wish to bargain within 45 days of the effective date of this Agreement.

d) The Agency agrees to send notification to Immigration Judges, Assistant Chief Immigration Judges, Regional Deputy Chief Immigration Judges, Principal Deputy Chief Immigration Judge, and the Chief Immigration Judge that it has entered into a settlement agreement with the Union and that, effective the date of this Settlement Agreement, it will recognize the Union as the exclusive representative of non-supervisory Immigration Judges at the Agency.

e) The Agency agrees that, upon timely request of the Union, it will process grievances that were initially denied by the Agency based on the Authority's November 2, 2020 Order or filed in accordance with the DOJ's Administrative Grievance procedures. To be considered timely, the Union must provide to the Agency a list of these grievances within 20 calendar days of the effective date of this Agreement. The Agency will process these grievances in the order provided by the Union. The Agency further agrees that it will contact Arbitrators Buckalew and Saunders, jointly with the Union, to inform them that the respective arbitrations should be processed according to the terms and conditions of the CBA.

f) The Agency agrees to provide the NAIJ President and Executive Vice President iPhones or similar communication devices with access to EOIR email, as had been the prior practice.

Section 4. Subject to the provisions in Sections 1 and 2 of this Agreement, and in exchange for the promises made by the Agency in Section 3 of this Agreement, the Union freely and voluntarily agrees to the following:

a) In exchange for the above-mentioned actions, the Union agrees to withdraw its unfair labor practice charges referenced in Section 1 of this Agreement.

b) The Union agrees that the Agency will not process dues deductions under Article 15 of the CBA pending the Authority's grant of the Union's Motion for Reconsideration of the Authority's Decision and Order issued November 2, 2020.

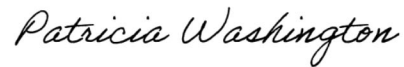
Section 5. **EFFECTIVE DATE.** The Parties understand and accept the terms and conditions of this Agreement. This Agreement shall be deemed fully executed and effective on the date of the last required signature here-on. The Parties further agree that a faxed or emailed signature will be acceptable and will be treated as an original signature for the purpose of execution of this Agreement.



Mimi Tsankov
Representative for the Union

12/7/2021

Date



Patricia Washington
Representative for the Agency

12/7/2021

Date