



NATIONAL ASSOCIATION OF IMMIGRATION JUDGES

President A. Ashley Tabaddor
c/o Immigration Court
6230 Van Nuys Blvd.
Van Nuys, CA
(818) 904-5221

Matthew W. Kaufman, Assistant Chief Immigration Judge
Executive Office for Immigration Review

March 19, 2020

Via: email

Dear Judge Kaufman:

I am in receipt of your March 18, 2020, notice to the National Association of Immigration Judges (NAIJ) of the Agency's decision to "utilize telework to the maximum extent practicable for Immigration Judges (IJs) who are not assigned (now or later) to a detained docket" and that "During the COVID-19 pandemic crisis, the Agency may assign IJs, currently on non-detained dockets, to detained dockets. Additionally, the Agency may rotate IJs through detained dockets."

As to the Agency's plans on telework, during our call following receipt of the notice, you explained that for the courts that are "closed" (as indicated in the EOIR Operational Status during Coronavirus Pandemic), to the extent equipment and work is available, judges will be expected to telework. Otherwise, they will be on Weather and Safety Leave. As to the remaining non-detained courts that are no longer hearing non-detained cases, the courts technically remain "open." Therefore, to the extent equipment (laptops) is available for judges in those courts, judges who wish to telework, may do so. Otherwise, they are expected to report to work in person. As to the detained docket, they are operating on a status quo basis and no tele-work accommodations or closures are expected at this time.

While we recognize the emergency nature of the current situation, the proposed action of the Agency clearly changes the conditions of employment for judges. *U.S. Dep't of the Air Force, 355th MSG/CC, Davis-Monthan Air Force Base, Ariz*, 64 FLRA 85, 89-90 (2009). By this correspondence, the NAIJ is formally requesting to bargain on the proposed actions relating to the above discussed matter.

To facilitate the discussion, the NAIJ offers the following preliminary proposals, subject to change based on developing circumstances:

1. Authorize “weather/safety leave” until a telework plan is in place. Current information from the CDC stresses social distancing and limitations on gatherings of more than ten people, and Judges should not be required to disregard that guidance. OPM has stated that in light of COVID-19, “weather/safety” leave is available for employees who cannot telework. Weather/safety leave should be granted to any employee of an open court who has been asked to self-quarantine by local health authorities or their personal doctor. Authorizing such leave now makes good sense. We can switch later to telework status if a viable telework plan is put in place.
2. Judges who wish to carry ROPs home, may do so, but are not expected to. The Agency will provide for delivery to and pick up from a Judge’s home where proper security for the deliveries can be assured. For Judges whose living situation cannot provide that level of security, weather and safety leave should be authorized.
3. Any potential equipment, including laptops and mobile hotspots, should be sent to judges by mail or delivery services if and when they are procured.
4. In lieu of in person training, Judges who are provided telework should be allowed to receive the necessary training through Skype, Facetime, or a similar video teleconferencing platform.
5. All judges in open courts who are assigned to a non-detained docket (“eligible Judge”), should have an equal opportunity to access laptops for telework. Courts designated open but not holding hearings should be provided available equipment for telework first. In courts where there is insufficient equipment available to allow every judge to telework, volunteers should be first to receive equipment and then judges in order of seniority, most senior judges going first.

6. If no equipment is available for an eligible Judge to telework, the Judge should be provided the option to utilize Weather and Safety Leave
7. If no equipment is available for an eligible Judge to telework, the Agency should relax restrictions on the use of personal laptops to enable Judges to telework and engage in work-related projects that do not involve PII, such as updating boilerplate, conducting legal research, etc.
8. Consistent with agencies such as the SEC, the Agency should provide flexible use of Weather and Safety Code for individuals who would otherwise be required to use their personal sick or annual leave.
9. Detained dockets should be covered first by volunteer judges, followed by judges in reverse seniority, newest judges first. There should be no prohibition on individual judges trading with local colleagues to cover their detained docket so long as the volunteer's docket does not conflict with any other high priority assignment.

I ask that we schedule a prompt meeting to discuss these and other proposals that can help facilitate an orderly transition to a telework setting for as many Judges as possible.

Sincerely,

/s/

A. Ashley Tabaddor
President, NAIJ