

Congress of the United States
Washington, DC 20515

June 3, 2021

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Lisa Monaco
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Garland and Deputy Attorney General Monaco:

As Members of the Labor Caucus, we write to express our deep and urgent concern regarding the Department of Justice's (DOJ) policy regarding the right of immigration judges to be represented by a union.

The Trump Administration was ideologically hostile to collective bargaining. President Trump himself issued three executive orders in 2018 that undermined public sector unions and the statutory right of federal employees to be represented by unions.¹ Under then-Attorney General Barr, DOJ also took steps to effectuate President Trump's opposition to collective bargaining by filing a petition with the Federal Labor Relations Authority (FLRA) to exclude immigration judges from eligibility for membership in the National Association of Immigration Judges (NAIJ).

The NAIJ has been the recognized representative of immigration judges for collective bargaining purposes since 1979. For years NAIJ has advocated on behalf of immigration judges on many issues including performance evaluations and discipline, judicial security, COVID response, and efficient docket management. NAIJ's collective bargaining agreement has protected judges from unfair discipline. Further, NAIJ has advanced the causes of due process, transparency, accountability, efficiency, and professionalism in the Immigration Court.

DOJ's petition was denied by the FLRA's Office of General Counsel in July 2020. Attorney General Barr then filed an application for review, pursuant to which the previous denial was reversed by the two-member Republican FLRA majority just days before the election in November 2020. In his dissenting opinion, then-FLRA Member and current FLRA Chairman

¹ Exec. Order No. 13836, 83 Fed. Reg. 25329 (Jun. 1, 2018); Exec. Order No. 13837, 83 Fed. Reg. 25335 (Jun. 1, 2018); and Exec. Order No. 13839, 83 Fed. Reg. 25343 (Jun. 1, 2018).

Ernest DuBester characterized the majority decision as “the antithesis of reasoned decision making” and stated that “it is abundantly clear that the majority’s sole objective is to divest the [immigration judges] of their statutory rights.” NAIJ filed a motion to reconsider this ruling which is currently pending.

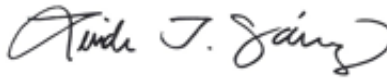
Elections have consequences. One of President Biden’s first actions was to rescind the Trump anti-union executive orders. Now it is up to you to rescind former Attorney General Barr’s anti-union petition with the FLRA. Should the FLRA’s decision be allowed to stand, the ramifications and the legal basis for the decision will have an immediate negative effect on NAIJ and all its bargaining unit members. But it will have an equally, if not far more, profound impact on federal employees’ right to form and join a union. Any professional employee will be vulnerable to being characterized as a manager because the FLRA decision is so broad and provides no rationale for the departure from its prior precedent.

We believe federal agencies should move forward in alignment with President Biden’s values and directives in support of the right of employees to organize and join a union. Therefore, we urge you to rescind this anti-union petition before the FLRA.

Sincerely,



Rep. Mark Pocan
Co-Chair, Labor Caucus



Rep. Linda T. Sánchez
Co-Chair, Labor Caucus



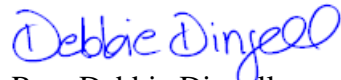
Rep. Thomas R. Suozzi
Co-Chair, Labor Caucus



Rep. Steven Horsford
Co-Chair, Labor Caucus



Rep. Donald Norcross
Co-Chair, Labor Caucus



Rep. Debbie Dingell
Co-Chair, Labor Caucus

David N. Cicilline
Member of Congress

Yvette D. Clarke
Member of Congress

Judy Chu
Member of Congress

Mark DeSaulnier
Member of Congress

Adriano Espaillat
Member of Congress

John Garamendi
Member of Congress

Jesús G. “Chuy” García
Member of Congress

Al Green
Member of Congress

Raúl M. Grijalva
Member of Congress

Pramila Jayapal
Member of Congress

Henry C. “Hank” Johnson, Jr.
Member of Congress

Mondaire Jones
Member of Congress

Marcy Kaptur
Member of Congress

Ro Khanna
Member of Congress

Dan Kildee
Member of Congress

Brenda L. Lawrence
Member of Congress

Barbara Lee
Member of Congress

Andy Levin
Member of Congress

Alan Lowenthal
Member of Congress

Grace Meng
Member of Congress

Joe Neguse
Member of Congress

Marie Newman
Member of Congress

Eleanor Holmes Norton
Member of Congress

Frank Pallone, Jr.
Member of Congress

Jamie Raskin
Member of Congress

Jan Schakowsky
Member of Congress

Robert C. “Bobby” Scott
Member of Congress

Darren Soto
Member of Congress

Ritchie Torres
Member of Congress

Nikema Williams
Member of Congress

Cc: Hon. Kamala Harris, Vice President of the United States, Chair of the White House Task Force on Worker Organizing and Empowerment

Hon. Marty Walsh, United States Secretary of Labor, Vice Chair of the White House Task Force on Worker Organizing and Empowerment