

Via Electronic Mail

April 6, 2020

Christopher A. Santoro, Acting Chief Immigration Judge
Office of the Chief Immigration Judge

William Hanrahan, Assistant Chief Immigration Judge
San Francisco Immigration Court

Scott D. Laurent, Assistant Chief Immigration Judge
Los Angeles Immigration Court

Rico J. Bartolomei, Assistant Chief Immigration Judge
San Diego Immigration Court

Re: California Attorneys, Advocates and Legal Organizations Call on EOIR to Expedite Release for Immigrant Detainees, Close Physical Courtrooms, and Give Detainees Option for Telephonic Hearings

We are 43 legal service providers from throughout the state that practice in California Immigration Courts. We write to demand that you immediately physically close all immigration courts to protect us, our clients, court staff and the public from COVID-19.

Right now, the United States is the epicenter of the COVID-19 pandemic. In California, our Governor has issued a mandatory shelter-in-place order requiring all but essential businesses to close. Public health officials have urged social distancing to prevent transmission of the virus and prevent collapse of our overburdened healthcare system. California courts are implementing a variety of protective measures to limit the spread of Coronavirus in the community, in particular limiting in-person activity.¹

Despite this, EOIR has continued to operate detained courts with few protections for staff, detainees or the public. Because EOIR has failed to implement national guidance, individual judges and courts have implemented widely varying policies on telephonic appearances through standing orders. In many cases, these orders require us to trade away our client's due process rights in exchange for our safety. In California, all immigration courts now prohibit witnesses from appearing to testify at hearings. And while attorneys may appear telephonically for hearings, staff at the court are forced to interact with attorneys and members of the public, in

¹Cheryl Miller, *How COVID-19 Is Impacting California Courts: Roundup of Services*, Law.com, Mar. 31, 2020. <https://www.law.com/therecorder/2020/03/27/how-covid-19-is-impacting-california-courts-roundup-of-services/>

spaces that do not allow for social distancing. Most disturbingly, our clients are packed into overcrowded detention centers that are potential tinderboxes for COVID-19. These conditions put our health and that of our communities at risk.

Immigration judges, prosecutors and attorneys nationwide are in agreement that EOIR's refusal to physically close the courts puts public health at risk. On March 22, the National Association of Immigration Judges (NAIJ), the Immigration and Customs Enforcement Professionals Union and the American Immigration Lawyers Association (AILA) warned that "failure to close all of the nation's Immigration Courts will exacerbate a once-in-a-century health crisis and lead to a greater loss of life."² On March 30, NAIJ reiterated its call for detained courts to close, stating that "there is no safe way to run the detained immigration courts during a pandemic because of the amount of social interactions that the courts require."³

As attorneys, our attendance at these hearings places our ethical obligations to our clients at direct odds with our own safety, and the safety of our families and the public. California's ethical rules require that we act competently and with reasonable diligence in representing clients.⁴ As a result, we are faced with an impossible ethical dilemma. Right now, we cannot diligently and completely prepare many cases because of challenges including:

- Many of us and our staff are over 60 or immuno-compromised, or live with individuals who are at high risk from COVID-19. We cannot safely travel to our offices to prepare filings and receive documents via mail.
- Many government offices are closed to the public. This means we cannot obtain records, such as criminal court documents, that are often vital to our client's cases.
- Communicating with clients and their family members to receive documents is also nearly impossible. Few family members have the ability to scan documents at home, and businesses they would normally rely on to do so are closed.
- We are unable to visit our clients to prepare sworn affidavits and testimony. ICE is currently requiring that all attorneys provide their own N95 masks, eye protection and gloves for legal visits.⁵ That personal protective equipment is in short supply in California: even some hospitals do not have sufficient supplies. Even if we could secure

² NAIJ, AILA and ICE Professionals Union, *As COVID-19 Rapidly Spreads, So Does Health Risk Created by Keeping the Nation's Immigration Courts Open*, March 22, 2020.

<https://www.naij-usa.org/images/uploads/newsroom/2020.03.22.02.pdf>

³ NAIJ, *The National Association of Immigration Judges Urgently Calls for Implementation of Required Health and Safety Measures for the Immigration Courts During the Coronavirus Pandemic*, March 30, 2020.

<https://www.naij-usa.org/images/uploads/newsroom/2020.03.30.01.pdf>

⁴ CA Rules of Professional Conduct Rule 1.1, Rule 1.3.

⁵ ICE Guidance on COVID-19: Visitation at Detention Facilities. <https://www.ice.gov/coronavirus>

that equipment, using it for client visits would put the lives of health care professionals at risk.

- Immigration courts are prohibiting our clients from presenting a full case and exercising important rights. Many courts and judges have issued standing orders that. Other courts allow attorneys to appear telephonically only if they waive their client's right to examine and object to evidence.⁶

Any legal proceeding undertaken in the current state of affairs unfairly prejudices our clients and their legal representatives, and as such, lacks due process. Given this, the safest path forward is for ICE to release all individuals in detention, beginning with the medically vulnerable, and for EOIR to close all courts and suspend all legal proceedings until we can guarantee the safety of our clients, ourselves, and the court employees. In the absence of these measures, we call on EOIR to **immediately physically close all immigration courts for the duration of this pandemic emergency.**

Until this unprecedented public health emergency is over, we will no longer appear at the court in person for hearings or filings. To do otherwise would violate our ethical obligations and put ourselves, court personnel and the public at risk.

Given the circumstances, we also urge EOIR to take the following measures:

- Recognize the unprecedented urgency presented by COVID-19 for individuals in detention, and enact policies and procedures focused on protecting the health and safety of detainees, court staff, and advocates.
- Shift court resources to reflect the dire humanitarian crisis at hand by prioritizing telephonic bond hearings, and adjudicate these hearings with an explicit recognition of the threat to health and safety of an individual detained during this pandemic, thereby ensuring that as many individuals as possible are released from detention centers where they are at high risk from COVID-19.
- Grant motions for bond hearings based on changed circumstances, and inform bond-eligible pro se respondents of their right to new bond hearings.
- Suspend all other hearings, except upon motion by an attorney to move forward. Inform all pro se respondents that future hearings will be suspended, unless they wish to move forward.
- Temporarily allow for telephonic appearance in all matters before the immigration court nationwide.

⁶ Department of Justice, Immigration Court Practice Manual, Appendix R: Standing Orders.
<https://www.justice.gov/eoir/page/file/1258536/download#page9>

We are ready to step up and do everything that is necessary to release individuals from detention as is necessary to protect public health. We must work together, and must act soon, before it is too late.

Sincerely,

ACLU of California
African Advocacy Network
Alameda County immigration Education Partnership
Alameda County Public Defender
California Collaborative for Immigrant Justice
Central American Resource Center - CARECEN - of California
Central American Resource Center (CARECEN) of Northern California
Centro Legal de la Raza
Community Justice Alliance
CRLA Foundation
Dolores Street Community Services
East Bay Community Law Center
Human Rights First
Immigrant Defenders Law Center
Immigrant Defense Advocates
Immigrant Legal Defense
Inland Coalition for Immigrant Justice
Jewish Family Service of San Diego
Justice and Diversity Center of the Bar Association of San Francisco
La Raza Centro Legal - San Francisco
Latin Advocacy Network (Latinan)
Law Office of Helen Lawrence
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Children
Long Beach Community Defense Network
McGeorge Community Legal Services
Orange County Rapid Response Network
Pangea Legal Services
Public Law Center
Resilience Orange County
Sacramento ACT
Sacramento Rapid Response Network

San Bernardino Community Service Center, Inc.
San Francisco Public Defender's Office
San Francisco Rapid Response Network
SIREN (Services, Immigrant Rights and Education Network)
Southern California Immigration Project
Stand Together Contra Costa
The LGBTQ Center of Orange County
UCLA Law Students for Immigrant Justice
University of San Francisco Immigration & Deportation Defense Clinic
USC Gould School of Law Immigration Clinic
USF Immigration and Deportation Clinic