



AMERICAN FEDERATION
OF GOVERNMENT
EMPLOYEES LOCAL 511



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

Immigration Judges, Prosecutors and Attorneys Call for the Nationwide Closure of All Immigration Courts

Position on Health and Safety of the Immigration Courts During the COVID-19 Pandemic

March 15, 2020

The National Association of Immigration Judges (NAIJ), the American Federation of Government Employees (AFGE) Local 511 (the Immigration and Customs Enforcement (ICE) Professionals Union), and the American Immigration Lawyers Association (AILA) (collectively, “the Organizations”) call for the emergency closure of the nation’s Immigration Courts in adherence with current public health protocols regarding the COVID-19 virus and recognizing the urgency of this public health crisis.

Our nation is currently in the throes of a historic global pandemic. The Department of Justice’s (DOJ) current response to the COVID-19 pandemic and its spread is insufficient and not premised on transparent scientific information. The DOJ is failing to meet its obligations to ensure a safe and healthy environment within our Immigration Courts. No doubt, closing the courts is a difficult decision that will impose significant hardship for those in the Migrant Protection Protocols and detained Respondents. But these are extraordinary times. Respondents who are in detained settings are in a particularly vulnerable situation that warrants specialized considerations. For example, steps should be taken to conduct bond redetermination hearings telephonically during this period. We support the use of telework which has been advocated by the Administration, and we are ready and able to work to ensure priority matters, including detained bond matters where appropriate, are addressed using technological tools wherever possible.

Coordinated through the leadership of the NAIJ, the Organizations urge immediate action to close our courts in light of the broad scope of the health and safety challenges facing our nation and the Immigration Court system. NAIJ proactively called for the DOJ to take the steps necessary to protect the Immigration Judges, the Immigration Court staff, and the public we serve. As of Sunday, March 15th, the DOJ has failed to institute adequate measures to protect our court's personnel and the public during this public health crisis.

On Friday, March 13th, the DOJ announced that it will close the Seattle Immigration Court and limit the size of some large master docket hearings at ten Immigration Courts in six cities within the United States for four weeks. The Organizations are firmly convinced that this action is woefully insufficient. We applaud the DOJ's decision to close down the Seattle Court as it recognizes the need to place the health and safety of the community first. However, the DOJ has provided no scientific or reasoned basis to explain why one locale deserves this type of protection, while the Immigration Courts in the rest of the country are being provided with either partial health and safety solutions, or worse, no health and safety precautions at all. The President has now declared a "National Emergency." Thirty-nine states have declared "State Emergencies." Some cities have declared "City Emergencies."

The Immigration Courts need immediate, sensible, rational, scientifically-based health and safety solutions that protect the Immigration Judges, their staff, the contract interpreters, the private bar, the respondents and their witnesses, the security staff, and so many of the other people who make each hearing possible. On Saturday, March 14, NAIJ consulted Dr. Ashish Jha, K.T. Li Professor of Global Health at the Harvard T.H. Chan School of Public Health, an internationally recognized expert and a leading authority on public health and COVID-19. We asked Dr. Jha to consider our Immigration Court structure and the nature of our hearings at more than 68 locations in cities throughout the United States in light of the current state of infection in our country due to the global pandemic. It is his expert opinion, from an epidemiological perspective, that the Immigration Court should not be holding any hearings at this point. He explained that it is impossible to determine which individuals who attend hearings are ill with COVID-19 virus, and stressed that people can infect others even though they are asymptomatic. He also explained that at this point, because of the lack of testing for COVID-19, we do not know which cities are "hot spots." In other words, no one can say which cities have more cases of COVID-19 than other cities. Instead, confirmed COVID-19 cases reflects only the availability of testing and not the spread of disease.

In the face of inadequate national testing, Dr. Jha said it is irresponsible to do anything other than close our courts until sufficient testing has been conducted. He estimates that in two to four weeks sufficient testing will have been completed so that epidemiological experts will be able to provide specific, data-based directions for organizations like our courts. He provided his unequivocal opinion that to continue to hold any hearings at any Immigration Court at this time presents a high public health risk.

Given Dr. Jha's uncontroverted expertise and studied opinion, we urge the Department of Justice to close the Immigration Courts to ensure the safety of all people involved in the process. Closing the Immigration Courts for the recommended limited period -- two to four

weeks -- will give the public health officials an opportunity to test and gain valuable information about who can transmit the COVID-19 virus and to reassess how best to ensure a safe environment for Immigration Court hearings. Failing to take this action now will exacerbate a once in a century public health crisis.

Now is the time to close the nation's 68 Immigration Courts for two to four weeks, to protect the health and safety of the Immigration Judges, the Immigration Court staff, and the public that we serve.