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FOR IMMEDIATE RELEASE:

Sunday, March 22, 2020

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As COVID-19 Rapidly Spreads, So Does Health Risk Created by Keeping the Nation's Immigration Courts Open

Immigration Judges, Prosecutors and Attorneys Renew Call for Immediate Closure of All Immigration Courts

WASHINGTON – Organizations representing federal immigration judges, the federal prosecutors who handle immigration cases, and lawyers representing immigrants, all say that it's urgent for the public's safety that the U.S. Department of Justice immediately close all 68 Immigration Courts operated by the Executive Office for Immigration Review (EOIR).

“Across the nation public health experts and government officials are trying to slow the spread of the Coronavirus through social distancing, banning group gatherings, disinfecting surfaces and other means. But in our Immigration Courts, we're packing people together in crowded rooms for prolonged periods. Keeping the courts open is not only a health risk to everyone who comes to these courtrooms, it is creating a serious health hazard for the broader public. The Immigration Courts should be immediately closed,” said Judge Ashley Tabaddor, who serves as the president of the National Association of Immigration Judges (NAIJ).

On March 15, NAIJ, along with the American Federation of Government Employees (AFGE) Local 511 (the Immigration and Customs Enforcement Professionals Union), and the American Immigration Lawyers Association (AILA), [called for the complete and temporary closure](#) of all immigration courts nationwide. That same week, leaders of the three organizations for the first time jointly held a news conference highlighting how the corona virus health risk is made worse by keeping the courts open. Since then, EOIR has agreed to [postpone all non-detained hearings](#) (with the exception of the Migrant Protection Protocol hearings (MPP)). EOIR also has shut down 11 of the 68 Immigration Courts completely. “This is a step in the right direction,” said Fanny Behar-Ostrow, a prosecutor who serves as the president, AFGE Local 511. “While we appreciate the actions EOIR has taken in the last few days, it falls far short of the

required action called for by the current state of our national crisis. It shows a complete disregard for the severity of this life-threatening public health crisis.”

The DOJ’s current response to the COVID-19 pandemic and its spread is disconnected from the needs and advice of community leaders and scientific experts. The Immigration Courts are especially vulnerable to the spread of the Coronavirus. Every link in the chain that brings individuals to the court, from the use of public transportation, to security lines, crowded elevators, hallways, the cramped cubicle spaces of court staff, inadequate waiting room facilities in the courthouses, and scant sanitizing resources at the courts, all place lives at risk. Individuals who in many instances have waited years for a hearing may also feel pressured to appear – even if they feel sick, for fear of being ordered deported.

“DOJ’s failure to pause operations and close all immigration courts is a total abandonment of its obligations to its employees, and to all those who come before the court as well as the greater community,” said Jeremy McKinney, AILA’s second vice president. “We know that the temporary closure of all courts is a difficult decision, particularly in the case of respondents who are detained and those in the MPP program. But these are extraordinary times; we are in the midst of a historic, global pandemic. The DOJ’s ‘business-as-usual’ approach is unnecessarily risking everyone’s lives.” Added McKinney, “DHS’s new policy requiring attorneys to wear personal protective equipment (PPE) in detention facilities would deny access to counsel for detained immigrants. There is a severe shortage of PPE across the nation. This requirement will make it impossible for lawyers to represent their clients unless they rob health care providers who are working to save the lives of thousands of patients of desperately needed equipment. All live in-person hearings need to be immediately suspended.”

As a result of the pandemic, every state and the District of Columbia have declared a state of emergency. California, New York, Connecticut, Washington, Illinois and New Jersey are on a full lockdown. These measures include the scaling back of mass transit in most urban centers where the courts are located, creating significant logistical problems for anyone needing to access the courts. Yet EOIR continues to recklessly operate the courts, placing court personnel, litigants and all community members in grave danger.

NAIJ, AILA and AFGE Local 511 have recommended that some critical court functions could be conducted through telework if the courtrooms are closed. Teleworking Judges stand ready and able to work to ensure priority matters, including detained bond matters, where appropriate, are addressed using technological tools wherever possible. Most bond hearings may be conducted by telephone, and DOJ should permit all detained respondents to immediately receive telephonic bond redetermination hearings where possible and submit supporting documents for detained bond matters to be faxed and emailed to a designated point of contact. When possible, ICE OPLA should stipulate to bond in written motions so it is not necessary to hold hearings. For those respondents on the MPP docket, EOIR must work with CBP to provide the respondents with the necessary documents to ensure their ability to appear for resumed future hearings.

The three organizations recognize that a closure of the courts does not have to be without an end date. The judges, prosecutors and lawyers all agree that the DOJ should close the courts for a period of two to four weeks to give public health officials, physicians, and federal, state and city leaders an opportunity to test and gain valuable information about the COVID-19 virus and update best practices in order to prevent the pandemic from overwhelming our healthcare system, supply chain and government services.

“Failing to close all of the nation’s Immigration Courts, both non-detained and detained settings, now will exacerbate a once-in-a-century public health crisis and lead to a greater loss of life. We cannot afford to wait another week,” said Judge Tabaddor.