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March 18, 2020

VIA EMAIL

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Dear ERO Deputy Field Office Director and OPLA Chief Counsel:

On behalf of the Colorado Chapter of the American Immigration Lawyers Association (AILA), the purpose of this letter is to request that Immigration and Customs Enforcement (ICE) offices serving Colorado and Wyoming, including Enforcement and Removal Operations (ERO) and the Office of the Principal Legal Advisor (OPLA), immediately take specific actions for the prevention and management of the coronavirus (COVID-19).

Specifically, we ask you to:

1. Cancel all ICE check-ins. We understand and certainly appreciate that ERO is extending reporting dates for those required to appear in person at ERO offices. However, we are unaware of the time period for these extensions. ICE should cancel all OSUP and/or ISAP appointments for the next 60-90 days. If it becomes necessary, it should extend those cancellations for additional months as conditions warrant.
2. Immediately release anyone with vulnerabilities from custody. ICE should immediately release vulnerable populations from ICE custody, including individuals 60 years of age and over; pregnant individuals; individuals with chronic illnesses, compromised immune systems, or disabilities; and individuals whose housing placements restrict their access to medical care and limit the staff's ability to observe them.
3. Decrease the number of people in detention to limit exposure to COVID-19. ICE should place new arrests on OSUP or ISAP to avoid an influx of additional individuals into the detention center. ICE should liberally use its discretion to release individuals from custody and decrease the overall ICE population, including through the increased use of parole authority, stipulating to bond in written motions, and the use of alternatives to detention (with no check-in requirements for 60 days or more as discussed above).

4. Take proper care to prevent transmission in custody. ICE should immediately test detainees who exhibit any symptoms and/or present risk factors, as delayed confirmation of cases will necessarily be too late to prevent transmission. ICE should also provide proper hygienic supplies at all ICE detention and check-in facilities, allowing easy access to all detained persons, the population under ICE supervision, and ICE staff. ICE should halt transfers from facility-to-facility and to out-of-state locations in order to prevent the spread of COVID-19 throughout individual states and the U.S. If ICE continues to place new arrests in detention centers, it should test each individual for COVID-19 before placing him or her with the detained population.
5. Allow stays of removal and other emergency motions to be submitted via mail. ICE should allow requests for stays of removal, and other emergency motions, to be submitted by mail instead of requiring an in-person filing with the applicant present.
6. Provide flexibility on all deadlines. ICE and OPLA should liberally agree to and/or grant requests to extend filing deadlines based on imposition of remote work; loss of staff; and necessity for child, elder, and family care based on school and institutional closures.
7. Stipulate to relief when appropriate, especially in detained cases. OPLA should stipulate to relief in cases where individual hearings are already scheduled but must be re-calendared based on COVID-19 disruptions, and where the record in itself demonstrates that the respondent has meaningfully met her burden of proof based on a well-developed record of proceedings and evidentiary submissions that compel a grant of relief from removal. When possible, ICE and/or OPLA should stipulate to bond in written motions so that it is not necessary to hold hearings.

The coronavirus (COVID-19) is spread by person-to-person contact and may also be spread by touching infected surfaces. At the time of this writing, there are over 160 confirmed cases of COVID-19 in Colorado, many of those in the Denver Metropolitan area, and the numbers are growing exponentially. Due to the shortage of tests, the true number is likely to be significantly higher.

The Center for Disease Control and Prevention (CDC) has recommended that events where more than 250 people gather be cancelled. On March 16, 2020, President Trump directed Americans to avoid gathering in groups larger than 10 people. Also on March 16, 2020, Colorado Governor Jared Polis announced the closure of in-house dining at all restaurants and bars for a period of 30 days. Public school districts are closed statewide. The Byron White U.S. Courthouse is closed to the public until further notice.

Many individual applicants, attorneys, and staff are members of “vulnerable populations” and are at risk of severe illness or death related to COVID-19. Even those who are not members of vulnerable populations risk adverse health consequences and spreading COVID-19 to others during this global pandemic. ICE and OPLA should take immediate action to avoid placing our community at increased risk by implementing the requests above.

Adopting the above-mentioned measures will allow ICE and OPLA to address the health concerns of their stakeholders, staff, and contracted workers, as well as protect the well-being of all of our families and loved ones.

Due to the rapidly evolving nature of this epidemic and the high price of inaction to the health and safety of our communities, we respectfully request a response by Thursday, March 19, 2020. If you have any questions or comments regarding this matter, please contact me directly.

We appreciate your prompt attention to this matter.

Sincerely,



AILA Colorado Chapter
Executive Committee

Kristin Knudson, Nicole Murad, Courtney Butler, Petula McShiras, Jennifer Casey, and Jennifer Smith