



James McHenry, Director
Executive Office for Immigration Review
United States Department of Justice
5107 Leesburg Pike
Falls Church, VA 22041

March 12, 2020

Dear Director McHenry,

On March 9, the National Association of Immigration Judges (NAIJ) wrote to Acting Chief Immigration Judge Christopher Santoro to recommend implementation of certain practices to protect our members and stakeholders from the threat posed by the novel coronavirus, COVID-19. We have not yet received a response.

In the few short days following that letter, the dangers posed by the spread of COVID-19 have only increased. As of this morning, thirteen states have declared States of Emergency based on COVID-19 outbreaks. Yesterday, the World Health Organization declared the COVID-19 outbreak a pandemic, and National Institute of Allergy and Infectious Diseases Director Dr. Anthony Fauci testified before the House Committee on Oversight and Reform that “things will get worse than they are right now.” In his address last night, President Trump stated that “we are marshaling the full power of the federal government and the private sector to protect the American people.”

In light of these troubling developments and official guidance from the White House, the Centers for Disease Control (CDC), and state and local public health authorities, NAIJ believes the limited protective measures we proposed in our March 9 letter are prudent but no longer sufficient to protect the health and safety of our Immigration Judges, our court staff, and those

who conduct business before our Immigration Courts on a daily basis. Additional protective measures should be implemented immediately.

Specifically, non-detained master calendar dockets must be completely suspended because they present a continuing and unacceptable risk in the current environment. As you know, our non-detained master calendar dockets typically bring 50 or more respondents into each courtroom; on busy days, some of our Immigration Courts schedule 13 or more master calendar dockets per day, resulting in hundreds of respondents from all over the world visiting our courtrooms, waiting areas, and other public areas. Many of the respondents have recently traveled internationally or live in close contact with those who have. In addition, many master calendar dockets include family groups with small children, and, of course, many respondents are accompanied by friends, relatives, and attorneys. These master calendar dockets bring hundreds of people into close and extended contact with each other and with the Immigration Judges, interpreters, and court staff. This is exactly the type of situation the White House, CDC and other public health authorities urge us to avoid, and we trust that you will agree that it is untenable and irresponsible in light of the current spread of COVID-19 infections across the country. Just this morning we were informed that an attorney who appeared at a large master calendar hearing in one of our courts on March 10 has informed the court that she is experiencing severe flu-like symptoms and that she is concerned about the possibility of a COVID-19 infection. While that court's supervisors are taking the appropriate steps to sanitize the courtroom and waiting areas, nothing can change the fact that this attorney was present in one of our courtrooms for over an hour waiting for her case to be called, seated in the back benches of the courtroom in close contact with dozens of other attorneys and respondents. We certainly hope that this incident will not involve a COVID-19 infection, but it stands to reason that even if it doesn't, it certainly will at some time in the upcoming weeks and months. Needless to say, we all share an interest in ensuring that such situations are prevented by taking all reasonable and appropriate risk mitigation measures.

Against this backdrop, and in the absence of uniform guidance, some Immigration Judges have attempted to implement their own risk mitigation strategies, including (as we suggested in our March 9 letter) waiving the appearance of represented respondents at master calendar hearings. However, these efforts have been frustrated by a time-consuming bureaucratic process that is simply not sufficient in the current circumstances. For example, one Immigration Judge attempted to advise attorneys scheduled to appear at an upcoming master calendar hearings that the appearances of their clients would be waived; however, she was informed that this would constitute a "standing order" that needed official clearance from her supervisor and the Acting Chief Immigration Judge pursuant to your Policy Memorandum 20-09 (issued on February 13, 2020). The delays inherent in such a process are incompatible with our need to take immediate steps to protect our health and the health of the entire community. Furthermore, even if such a

standing order is approved, it would not extend to the many respondents who appear without counsel, including in initial master calendar hearings. As such, these types of limited solutions--even if eventually approved by senior EOIR leadership--would remain woefully inadequate to address the current public health crisis.

Therefore, we call on you to suspend all non-detained master calendar dockets for the duration of this public health crisis. Immigration Judges can use cancelled master calendar time to hear individual cases (including addressing the backlog of hundreds of thousands of long-pending cases scheduled for individual hearing) that do not involve unwarranted exposure to large numbers of people in our space-limited facilities.

We applaud EOIR's decision to allow telework for Appellate Immigration Judges in response to the COVID-19 crisis. Immigration Judges can likewise complete valuable research and writing outside of the crowded Immigration Court setting, and, pursuant to OPM's coronavirus guidance to agencies, a telework plan should be immediately implemented.

We also understand that the situation faced by scheduling of detained dockets is different, and that the liberty interests associated with those dockets may require a somewhat different approach. Nevertheless, it is also incumbent on EOIR management to mitigate the potential harm to Immigration Judges, court staff, and stakeholders appearing in the detained setting. With that in mind, we urge you to begin working with NAIJ to develop common-sense ways to increase "social separation" in detained immigration courts, such as expanding the use of video-conference for master calendar hearings. This too should begin immediately.

We look forward to working cooperatively with you and the Office of the Chief Immigration Judge to develop and implement these best practices immediately, given that the COVID-19 situation continues to threaten new communities every day. We therefore request your response to this call to action in a manner consistent with the imminent threat posed by this expanding public health crisis.

Sincerely,

A. Ashley Tabaddor

Ashley Tabaddor
President, NAIJ

cc: All Immigration Judges