



March 23, 2020

U.S. Department of Justice
Executive Office for Immigration Review
ACIJ Amy Hoogasian (Phoenix and Florence)
ACIJ Irene Feldman (Tucson and Eloy)

Delivered via email

Dear Judge Hoogasian and Judge Feldman:

We write to express our concern over EOIR's failure to act on ICE's recent misguided PPE policy. We ask EOIR work with us to protect every immigrant's fundamental right to counsel and due process in removal proceedings.

AILA AZ has contacted Arizona State Bar ethics counsel regarding our members' ability to competently represent clients in removal proceedings in light of ICE's new policy. Ethics counsel has advised AILA AZ that ICE's PPE policy and EOIR's failure to suspend detained hearings create a conflict for attorneys under the Arizona Rules of Professional Conduct. Specifically, conflict arises when attorneys are denied access to the detention centers for failing to have the required PPEs. As has been widely reported locally and nationally, PPEs are not readily available due to the worldwide shortage of PPEs for hospitals, medical personnel and other first responders. In fact, federal, state and local governments have instructed all persons to avoid obtaining these necessary products unless **medically** necessary¹. ICE's policy, coupled with EOIR's inaction, makes it impossible for attorneys to fulfill their obligations to their clients, denies every detained immigrant in custody the fundamental right to counsel and due process of law as guaranteed by the U.S. Constitution, and perhaps most importantly, directly increases the risk of harm to

¹ The CDC has clearly reported on the critical shortage of face masks even in high risk medical and emergency situations to the extent that was forced to create procedures for medical personnel to **ration** supplies, "**Prioritize facemasks for selected activities such as:** For provision of essential surgeries and procedures; During care activities where splashes and sprays are anticipated; During activities where prolonged face-to-face or close contact with a potentially infectious patient is unavoidable; For performing aerosol generating procedures, if respirators are no longer available." <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html>. It is unconscionable that despite this, EOIR and ICE are ordering immigration attorneys to obtain and use these vitally important and vitally limited resources for proceedings that could be halted and access to counsel that could be electronic.

American communities by requiring the funneling of precious resources away from first responders.

We acknowledge Judge Hoogasian's and Judge Feldman's Standing Orders permitting telephonic appearances for Master Calendar and Custody Redetermination hearings only. While this is helpful and appreciated, the Orders do not address Individual Merits Hearings and fail to consider newly formed attorney-client relationships, which necessarily require time to become familiar with the case and to file necessary documents with the Court. The Standing Orders are insufficient and create an undeniable conflict. AILA AZ calls on EOIR to resolve this critical issue, and the undeniable health ramifications underlying all in person transactions that are necessary to the ethical practice of law before immigration courts, by temporarily halting all hearings in the detained Courts during the national emergency.

Our worst concerns came to a head this morning when one of our members was denied entry into the Eloy Detention Center for an Individual Hearing for an at-risk elderly woman. Our member was told by the EOIR staff to leave the facility to find the required PPEs and then report back to court for the hearing. Our member attempted to comply and was permitted to enter with a hodgepodge of materials she was able to assemble. However, the court interpreter was not allowed to enter the detention center because he did not have the proper PPE. A different Court interpreter was apparently permitted to enter the facility earlier and allowed to proceed *without the required PPE* to carry out their interpreting function in Court. This demonstrates both the inadequacy of ICE's policy and the inconsistencies in its application.

We want to acknowledge ICE's limited accommodation to set up a phone system for attorneys to speak with their detained clients at the La Palma Detention Center. While this is a step in the right direction, it is insufficient. This system has not been set up at either the Eloy Detention Center or the Florence Processing Center. Moreover, the permitted phone calls at the La Palma Detention Center are limited to a 30-minute phone call, which is wholly inadequate for court preparation.

AILA AZ understands that these policies are being created at EOIR and ICE headquarters. We urge you to please forward our local concerns to headquarters if you are unable to implement policies locally.

Finally, EOIR must acknowledge that the constitutional right to counsel and fundamental due process is also being undermined for **unrepresented immigrants** who are unable to secure counsel due to ICE's PPE policy. AILA AZ is advocating on behalf of all detained immigrants, whether or not they are represented by counsel, during this national emergency.

AZ AILA urges EOIR to immediately suspend temporarily all Master Calendar *and* Individual hearings held at Florence Processing Center, Eloy Detention Center, and La Palma Correctional Center until such time as the national emergency declaration has been rescinded.

Thank you for your time. We look forward to hearing from you as soon as possible.

Respectfully submitted on behalf of AILA AZ,

Pamela Florian, Chair

Olivia Porter, 1st Vice Chair

Delia Salvatierra, 2nd Vice Chair, AILA AZ Liaison to EOIR

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