

Exhibit 24

Declaration of Kate Voigt

I, Kate Voigt, hereby declare as follows:

I am an attorney in good standing in the state of New York. I am the Senior Associate Director of Government Relations for the American Immigration Lawyers Association (“AILA”), a Plaintiff in this lawsuit. I have personal knowledge of the facts stated herein and if called as a witness to testify to the facts states herein, I could and would competently do so under oath.

AILA is a national membership association of more than 15,000 attorneys and law professors who practice and teach immigration law. AILA members provide legal representation to, among others, U.S. business and industries seeking foreign workers, foreign students, entertainers, athletes, and individuals seeking relief under our nation's immigration laws. Our members appear before various administrative and judicial bodies, including U.S. Citizenship and Immigration Services (USCIS), local Immigration Courts, the Board of Immigration Appeals (“BIA”), and federal district courts and the circuit courts of appeals.

Our mission is to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and to enhance the professional development of our members. To that end, we engage in advocacy before Congress, the Judiciary, federal administrative agencies and the media for the immigration-related interests of our members and their clients. We also promote the delivery of competent, ethical, and lawful immigration services, and increase the knowledge and professionalism of our members by providing continuing legal education and technical support.

In addition to our national organization, AILA supports 39 local chapters throughout the United States. Each of these local chapters is a separately run organization with their own bylaws and leadership. The chair of each local chapter is on AILA's Board of Governors.

AILA National Staff advance the organization’s policy and advocacy objectives through a number of methods, including researching the impact of existing immigration regulations, policies, and procedures on our members; communicating regularly with membership through different channels to get more information about how these policies and procedures are being implemented; identifying common threads in their experiences; relaying these trends to relevant stakeholders within the legislative and executive branches; and lobbying for sensible legislative and policy immigration reforms that will promote efficient and effective representation of noncitizens.

To understand the effects policies and procedures promulgated by immigration agencies have on our members, my team and I regularly communicate with the local chapter leaders and volunteers; solicit information from members directly through online forms asking for case examples; and direct email and telephone communication with individual members. The issues that local leadership and volunteers raise inform my communication and advocacy efforts at the national level.

Each local chapter also appoints a liaison who is responsible for directly interfacing with local representatives from the various agencies, including Immigration and Customs Enforcement (“ICE”) and the Immigration Courts. These liaisons assume primary responsibility for understanding the questions and concerns of their local membership and communicating them to the appropriate local agency office, when possible. AILA national maintains active electronic mailing lists (listservs) of local liaisons for each agency. Liaisons use the listservs to post about recent experiences and policy changes in their jurisdictions, to ask questions, and to source strategies for managing unfamiliar circumstances or responding to unfavorable decisions. By participating in conference calls between local chapter heads and reviewing communication on our liaison listservs, I stay abreast of the experiences of our members on the ground and the pressing issues that they face in their daily work.

There Is an Urgent Need for Increased Access to Counsel Protections Under COVID-19

Since the outbreak of the COVID-19 pandemic, AILA’s advocacy efforts have focused largely on understanding its impact is on administrative agencies, including immigration courts, detained noncitizens and the attorneys who represent them. AILA has engaged with representatives from the Department of Homeland Security (“DHS”) and the Department of Justice (“DOJ”) in an attempt to obtain the latest information and guidance on how agencies would operate in response to COVID-19. We have relayed the information gathered with our membership in practice resources, updates to our website, and through local chapter liaisons and leadership.

I have held regular communications with AILA members around the country about their experiences representing noncitizens during the current public health crisis. My team and I have communicated with members of AILA’s National ICE and Executive Office for Immigration Review (“EOIR”) committees about how ICE’s response to the pandemic has impacted AILA members’ ability to represent and advocate for noncitizens. I also regularly monitor the electronic listservs that AILA maintains for local liaisons. On these listservs, members post questions, solicit advice, and share strategies for navigating DHS and DOJ policies and effectively advocating for their clients. Since the outbreak of COVID-19, there has been a considerable uptick in activity on our listservs related to EOIR and ICE’s response to the pandemic. Individual members have asked questions about how to navigate the rapidly shifting environment and have shared firsthand accounts of the way national policy is implemented at the local level. There is tremendous disparity in the way local offices have responded to the pandemic and implement the directives from ICE’s national leadership.

My team and I used the information we gathered from members, directly and indirectly, to develop a series of policy recommendations that would ensure public safety while mitigating the harm to noncitizens in detention and facing removal. My team and I sent DHS and DOJ two separate letters that contained detailed recommended actions to promote safety and ensure adequate access to counsel.

On March 12, 2020, AILA sent a letter addressed to Matthew T. Albence, the Senior Official Performing the Duties of Director at USCIS, and Henry Lucero, the Executive Associate Director of ICE, urging ICE to immediately implement procedures for the prevention and

management of COVID-19 at all ICE detention facilities.¹ On March 16, 2020, AILA sent a follow up letter, reiterating our request for guidance and recommending that the agencies adopt various measures for the prevention and management of COVID-19.² This letter made mention of a statement AILA made on March 15, 2020, which called for the emergency closure of the nation's immigration courts.³ We received a written response to the March 16 letter via email from ICE's Office of Partnership and Engagement which directed us to review ICE's website on COVID-19.⁴

On March 23, 2020, AILA along with nearly 100 partners, including law firms, legal non-profits, and universities, sent a letter to James McHenry, Director of the Executive Office of Immigration Review, and Mathew T. Albence, imploring ICE to immediately authorize robust and automatic use of telephonic and video conferencing technology for immigration court appearances and attorney-client meetings in order to protect public health and ensure basic due process rights. As with previous letters, I participated in drafting the specific recommendations. As noted in the letter, “[m]any if not most of the facilities used by ICE to confine people for immigration purposes do not provide meaningful ways for legal services providers to speak with detained individuals remotely. When facilities do allow confidential legal calls, their capacity is limited to one or two phones at any given time for the entire ICE population, making calls nearly impossible to schedule. The lack of federal direction to remedy this substantial due process violation is leading to a patchwork of conflicting and insufficient responses regionally and locally.”⁵

On March 26, 2020, AILA along with several other partners sent a letter to the U.S. Attorney General William P. Barr and Mr. McHenry. We expressed our concern that “EOIR continues to operate courts in a business-as-usual manner, placing court personnel, litigants, and all community members in harm’s way.” In response to EOIR’s actions, we asserted that “DOJ and EOIR decision-making has been opaque, with inadequate information being released, causing confusion and leading to litigants showing up at hearings that are cancelled without notice” and that “DOJ’s current response to the COVID-19 pandemic and its spread is frighteningly disconnected from the realities of our communities, and the advice of local leaders and scientific experts.”⁶

Lack of Consistent Guidance on Court Closings and the Availability of Telephonic Hearings Has Caused Confusion

On March 18, 2020, EOIR issued a policy memorandum,⁷ “remind[ing]” immigration judges and practitioners of “well-established” authorities that can be used to minimize contact in immigration proceedings including the issuance of standing orders by individual judges. The guidance in this memorandum was insufficient and, among other recommendations in the March

¹ See Exhibit A (attached hereto).

² See Exhibit B (attached hereto).

³ See Exhibit C (attached hereto)

⁴ See Exhibit D (attached hereto).

⁵ See Exhibit E (attached hereto).

⁶ See Exhibit F (attached hereto).

⁷ See <https://www.aila.org/infonet/eoir-memo-non-detained-cases-covid-19>.

23, 2020 letter, the signing organizations called for a policy that would authorize attorneys and representatives to appear telephonically at any hearings, dispensing with a requirement for a written motion and replacing it with an instruction to email the clerk of the corresponding court. To my knowledge, EOIR has yet to implement such a policy, leading to a patchwork of policies that vary by jurisdiction and by judge and which are subject to change.

Additionally, certain courts and detention centers have closed for hearings and/or visitors with little public notice. Closures have lasted for as little as one day and as long as indefinitely. ICE and EOIR have not consistently provided explanations for closings, however some announcements have stated that a facility is closed because a staff person or recent visitor has been diagnosed with COVID-19. Facility closures have been announced with little warning via social media platforms, and, eventually, the EOIR website. AILA has tried to post these announcements to its COVID-19 resource page whenever possible, given that our members are impacted directly by the closures. Closures are announced at all hours of the day – including same day closures announced early the same morning and next day closures announced close to midnight the day before. For example, AILA posted three updates to our website dated April 1 regarding closures for April 2, all posted to twitter between 10:06pm ET and 11:51pm ET.

The lack of a blanket authorization for telephonic appearances by attorneys, combined with the last-minute and inconsistent notices of court closures released by EOIR, has caused confusion and fear, and has even led attorneys to leave their houses and travel to court only to find out that the hearing was cancelled or could have been done telephonically. These inconsistent and variable policies have made it difficult for members to represent their clients.

PPE Requirements are Blocking Detainee Access to Counsel

On Saturday, March 21, 2020 AILA was made aware that ICE would be requiring all legal visitors to provide and wear personal protective equipment (PPE) (disposable vinyl gloves, N-95 or surgical masks, and eye protection) while visiting any detention facility. I was first made aware of the policy by AILA members who had received information via email from their local ICE offices. The ICE website at <https://www.ice.gov/covid19> was updated on Saturday with the requirement, as well.

AILA members immediately expressed concern about where they would be able to get PPE during a time when hospitals and medical personnel were experiencing a shortage. Members feared they would be turned away due to a lack of PPE. AILA alerted its members to the new policy via its website. Chapters reached out to their local ICE offices and were met with a variety of responses. Some ICE offices said there was no PPE requirement. Some said PPE was only required for contact visits. Some said all legal visitors – including attorneys attending immigration courts located in DHS facilities – would be required to wear PPE.

By Tuesday, March 24, ICE’s website provided updated guidance that stated: “For in-person, contact (without any physical barriers) visits to occur, the attorney must undergo screening using the same procedures as staff. ICE will require all legal visitors to provide and wear PPE (e.g., gloves, N-95 masks, and eye protection) while visiting with any client at any facility.” However,

my team and I continued to hear from members who reported that ICE required them to wear PPE to attend court in DHS facilities.

As of April 2, 2020, the website was updated to remove the reference to PPE, but also states that “the ultimate legal visit approving authority lies with the Warden or Facility Administrator.”

Impact of Collective DHS and DOJ Policies

These collective policies have caused wide-spread confusion, fear, and insecurity among AILA members, their clients, and other immigration court stakeholders.



Kate Voigt

Dated April 6, 2020

Exhibit A



March 12, 2020

Matthew T. Albence
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

Submitted via email

Henry Lucero
Executive Associate Director
U.S. Immigration and Customs Enforcement
Enforcement and Removal Operations

Submitted via email

Re: URGENT: ICE facilities and COVID-19

Dear Mr. Albence and Mr. Lucero:

On behalf the American Immigration Lawyers Association (AILA) Immigration and Customs Enforcement (ICE) Liaison Committee (“Committee”), we are writing to request that ICE immediately implement procedures for the prevention and management of COVID-19 at all ICE facilities, including all detention centers and ICE locations where individuals must report for ICE supervision.

[CDC guidance](#) provides that older adults and people who have serious chronic medical conditions including heart disease, diabetes, and lung disease are at higher risk for getting very sick or dying from COVID-19. The CDC advises that these higher risk people take precautions such as avoiding crowds and close contact with others. Where there is COVID-19 spreading in the community, the CDC recommends that these higher risk individuals take extra measures including increasing the distance between themselves and others.

We ask for the immediate release from detention those who are at high risk of serious illness or even death, including people 60 and older, those with underlying health conditions including heart disease, lung disease, or diabetes, people who have weakened immune systems, and people who are pregnant, are elderly, or have pre-existing conditions. In addition, we urge you to consider canceling or rescheduling appointments, and/or implementing other alternative

measures, such as telephone check-ins, for all persons who are under Orders of Supervision (OSUP) and/or the Intensive Supervision Appearance Program (ISAP).

Many of the detention centers are at maximum capacity and are a breeding ground for rapid transmission of the coronavirus to the population, which includes detainees, ICE personnel, attorneys, and Immigration Judges at detained courts. A large segment of the detained population includes persons who do not present a flight risk, demonstrate that they have U.S. sponsors and long-term ties to the community, and have no or low-level infractions, such as minor traffic violations.

Moreover, the population that is currently fulfilling OSUP and/or ISAP reporting requirements face similar dangers to exposure and spread of the virus to the general public, as many ICE check-in facilities are overcrowded with cramped waiting rooms with countless people in close proximity with one another and with ICE staff. OSUP and ISAP check-ins often require multiple hour, and at times, day-long wait times in these conditions. ICE has already identified persons with OSUP and ISAP as not warranting ICE detention, but many are required to report frequently, furthering the potential for rapid transmission of the virus.

We further ask that ICE immediately permit its regional field offices to coordinate a response and receive proper guidance from each of their state health departments, and that each field office make local decisions on a case-by-case basis regarding determination of release, de-escalation of ICE reporting requirements, and closure of facilities. This matter is extremely urgent and ICE has the ability to implement appropriate and immediate measures, field office-by-field office, that can minimize and even prevent an outbreak, thus saving countless lives.

We urge that you consider and establish the following proactive measures immediately:

1. **Release of vulnerable populations from ICE custody**, including those persons who are detained and are at high risk of serious illness if they are infected, such as pregnant people, people 60 and over, and people with chronic illnesses, compromised immune systems, or disabilities, and people whose housing placements restrict their access to medical care and limit the staff's ability to observe them.
2. **Halt all ICE transfers** from facility-to-facility and to out-of-state locations in order to prevent the spread of the coronavirus throughout individual states and the U.S..
3. **Cancel and/or reschedule all OSUP and/or ISAP appointments** that are scheduled for at least the next 60-90 days, and extend the same for several months as conditions warrant.
4. **Immediately test the current ICE population and all new incoming detainees** exhibiting symptoms and/or presenting risk factors, as delayed confirmation of cases will necessarily be too late to prevent transmission within the population.
5. **Provide for 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.

6. **Engage in ongoing and open communication with stakeholders and the public** regarding ICE's procedures and decisions as related to managing COVID-19 in all facilities, as well as release of relevant data regarding the population under ICE detention and supervision.
7. **Publicly announce that ICE will not conduct enforcement activities in or around medical facilities.** ICE has already indicated that it does not conduct enforcement operations at medical facilities, except under extraordinary circumstances. But the "extraordinary circumstances" exception leaves people considering seeking medical attention guessing as to whether ICE might consider their case an extraordinary circumstance. Any hesitation to seek medical attention puts both the individual and the community at risk. In the midst of this crisis, ICE should unequivocally state that no enforcement will be conducted at or near medical facilities.

We respectfully request that you respond with an update on ICE's decisions in preventing an outbreak of COVID-19 **by Monday, March 16, 2020**. If you require any additional information, please contact Sui Chung, Chair of the ICE Liaison Committee at schung@lawgroupusa.com or Laura Lynch, Senior Policy Counsel at the American Immigration Lawyers Association at llynch@aila.org.

Sincerely,

The American Immigration Lawyers Association's Immigration and Customs Enforcement Liaison Committee

CC:

Barbara M. Gonzalez, Assistant Director, ICE Office of Partnership and Engagement,
Richard A. Rocha, ICE Spokesperson

Exhibit B



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

The Honorable William P. Barr
Attorney General
U.S. Department of Justice

James McHenry
Director
Executive Office for Immigration Review

Matthew T. Albence
Deputy Director and Senior Official
U.S. Immigration and Customs Enforcement

Submitted via email

March 16, 2020

Dear Attorney General Barr, Director McHenry, and Deputy Director Albence,

The American Immigration Lawyers Association (AILA) is writing to follow up on our March 12, 2020 [letter](#) requesting that Immigration and Customs Enforcement (ICE) immediately implement procedures for the prevention and management of COVID-19 and our March 15, 2020 [statement](#) calling for the emergency closure of the nation's immigration courts, sent in conjunction with the National Association of Immigration Judges (NAIJ) and the American Federation of Government Employees (AFGE) Local 511 (the Immigration and Customs Enforcement (ICE) Professionals Union).

We appreciate the important measures already taken by the Department of Homeland Security (DHS) and the Department of Justice (DOJ), including the suspension of non-detained master calendar hearings. However, the evolving nature of this crisis demands more aggressive action. Since our initial letter to ICE, President Donald Trump [proclaimed](#) that the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020. States and localities across the country have suspended school, put in place restrictions on the size of gatherings, closed restaurants and bars, and shut down tourist activities.

DOJ and DHS must acknowledge the severity of this pandemic, and take the following steps to protect DOJ employees, DHS employees, respondents, representatives, interpreters, experts, and other immigration court stakeholders, as well as the general public:

- **Immediately Close Immigration Courts:** DOJ should immediately close immigration courts for a minimum of two to four weeks so that public health officials have an opportunity to test and gain valuable information about who can transmit the COVID-19 virus and to reassess how to ensure a safe environment for immigration court hearings.

AILA National Office

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Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org

AILA Doc. No. 20031666. (Posted 3/16/20)

- **Hold Telephonic Bond Hearings and Stipulate to Bond in Writing:** DOJ should proceed with fully telephonic bond hearings so that detained individuals who are eligible can be released from custody as soon as possible and allow supporting documents to be faxed and emailed to the appropriate clerk. When possible, ICE OPLA should stipulate to bond in written motions so it is not necessary to hold hearings.
- **Cancel ICE Check-Ins:** ICE should cancel and/or reschedule all OSUP and/or ISAP appointments that are scheduled for at least the next 60-90 days and extend the same for several months as conditions warrant.
- **Immediately Release Anyone With Vulnerabilities from Custody:** ICE should immediately release vulnerable populations from ICE custody, including people 60 and over, pregnant people, and people with chronic illnesses, compromised immune systems, or disabilities, and people whose housing placements restrict their access to medical care and limit the staff's ability to observe them.
- **Decrease the Number of People in Detention to Limit Exposure:** 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 use of alternatives to detention (with no check-in requirements for thirty days or more).
- **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 the coronavirus throughout individual states and the U.S.
- **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.
- **Issue a Blanket Extraordinary Circumstances Exception for One-Year Filing Deadlines:** DOJ should issue a blanket extraordinary circumstances exception for asylum one-year filing deadlines that fall from March 1, 2020 (the beginning of the National Emergency) through the reopening of immigration courts.

- **Provide Flexibility on All Deadlines:** ICE and DOJ should liberally agree to and/or grant requests to extend filing deadlines based on imposition of remote work, loss of staff, necessity for child, elder, and family care based on school and institutional closures.
- **Commit to Flexibly and Favorably Addressing COVID—19-Caused “Age Outs” on a Case-By-Case Basis.** In the context of cancellation of removal for nonpermanent residents under INA § 240A(b), the Board of Immigration Appeals has acknowledged its ability to review the particular facts in a case in addressing a respondent’s argument that the age of qualifying relative should be “frozen” prior to the final administrative decision. *Matter of Isidro*, 25 I&N Dec. 829, 832 (BIA 2012) (rejecting respondent’s contention that age should be locked where there was no “undue or unfair delay” in the course of proceedings); see also *Martinez-Perez v. Barr*, No. 18-9573 (10th Cir. 2020) (BIA has jurisdiction and authority to interpret cancellation statute in a way that fixes the age of respondent’s daughter in light of undue or unfair delay).
- **Stipulate to Relief When Appropriate, Especially in Detained Cases:** ICE 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.
- **Parole Respondents in the Remain in Mexico Program:** DHS should parole all respondents in the Remain in Mexico program (also known as MPP) into the U.S. on the date of their scheduled immigration court hearing date and provide them with a new hearing date in a non-detained court. At a minimum, EOIR must work with CBP to issue a new EOIR hearing notice and CBP must provide the respondent with both the new EOIR hearing notice and an MPP tear sheet. If the respondent does not have an MPP tear sheet containing a future U.S. immigration court date, the respondent would be out of status in Mexico and Mexico’s migration institute (INM) will likely refuse to renew the individuals’ temporary status in Mexico.

We respectfully request a response as soon as possible given the emergent circumstances. Please feel free to contact Kate Voigt (kvoigt@aila.org) with questions.

Sincerely,
THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CC: Barbara M. Gonzalez, Assistant Director, ICE Office of Partnership and Engagement;
Richard A. Rocha, ICE Spokesperson; Lauren Alder Reid, Assistance Director, EOIR Office of Policy.

Exhibit C



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

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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.

Exhibit D

RE: AILA Letter Regarding Urgent COVID-19 Measures

Rocha, Richard A <Richard.A.Rocha@ice.dhs.gov>

Tue 3/17/2020 1:06 PM

To: Kate Voigt <KVoigt@aila.org>

Cc: Lauren.Alder.Reid@usdoj.gov <Lauren.Alder.Reid@usdoj.gov>; Sharvari Dalal-Dheini <SDalal-Dheini@aila.org>; Sui Chung, Immigration Law & Litigation Group <schung@lawgroupusa.com>; Aaron Hall <aaron@immigrationissues.com>; Jeremy McKinney <jeremy@mckinneyimmigration.com>; Nicholson, Elizabeth M <Elizabeth.M.Nicholson@ice.dhs.gov>

Hello Kate,

Thank you for copying us on this letter. For ICE, as we mentioned to AILA last week, all updates we are able to share are being posted at: <https://www.ice.gov/covid19>. We are focused on updating the information there as it becomes available so that all stakeholders can get the updates at the same time.

We appreciate your continued engagement during this time and understanding of the rapidly-changing dynamic and operational needs.

Please feel free continue to refer any additional requests or inquiries to me at the ICE Office of Partnership and Engagement.

Thank you,

Richard Rocha

(A) Director, Office of Partnership and Engagement

U.S. Immigration and Customs Enforcement

202-407-5142 cell

Richard.a.rocha@ice.dhs.gov

From: Kate Voigt <KVoigt@aila.org>

Sent: Monday, March 16, 2020 8:02 PM

To: james.mchenry@usdoj.gov; matthew.albence@hq.dhs.gov; William.barr@usdoj.gov

Cc: Lauren.Alder.Reid@usdoj.gov; Rocha, Richard A <Richard.A.Rocha@ice.dhs.gov>; Gonzalez, Barbara M <Barbara.M.Gonzalez@ice.dhs.gov>; Sharvari Dalal-Dheini <SDalal-Dheini@aila.org>; Laura Lynch <LLynch@aila.org>; Jeremy McKinney <jeremy@mckinneyimmigration.com>

Subject: AILA Letter Regarding Urgent COVID-19 Measures

Dear Attorney General Barr, Director McHenry, and Deputy Director Albence,

The American Immigration Lawyers Association (AILA) is writing to follow up on our March 12, 2020 [letter](#) requesting that Immigration and Customs Enforcement (ICE) immediately implement procedures for the prevention and management of COVID-19 and our March 15, 2020 [statement](#) calling for the emergency closure of the nation's immigration courts, sent in conjunction with the National Association of Immigration Judges (NAIJ) and the American Federation of Government Employees (AFGE) Local 511 (the Immigration and Customs Enforcement (ICE) Professionals Union).

We appreciate the important measures already taken by the Department of Homeland Security (DHS) and the Department of Justice (DOJ), including the suspension of non-detained master calendar hearings. However, the evolving nature of this crisis demands more aggressive action. Please see attached for necessary measures that should be taken to respond to this growing pandemic.

We respectfully request a response as soon as possible. Should you have any questions, please do not hesitate to contact me.

Sincerely,
Kate Voigt

Kate Voigt, Esq.

Senior Associate Director of Government Relations

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Exhibit E

James McHenry
Director
Executive Office for Immigration Review

Matthew T. Albence
Deputy Director and Senior Official
U.S. Immigration and Customs Enforcement

Submitted via email March 23, 2020

Re: Legal Access in Immigration Detention and Immigration Courts During COVID-19
Pandemic

Dear Director McHenry and Deputy Director Albence,

The undersigned organizations and their members across the country provide legal services to and advocate for individuals detained in the custody of U.S. Immigration and Customs Enforcement (ICE). We write to you during the worldwide spread of the novel coronavirus, also known as COVID-19. The spread of this disease has been declared a global pandemic by the World Health Organization.¹ The President of the United States has declared a national state of emergency due to COVID-19.² Public health officials have been clear that close interactions with others must be minimized to limit the spread of this virus.³

During this crisis, to protect the health of government employees and contractors, detained persons, legal service providers, and the public, while protecting basic due process rights, we urge you to immediately implement mechanisms to allow for consistent and confidential free phone and videoconferencing (VTC) communication with individuals in ICE custody wherever they are detained, to permit telephonic and VTC appearance by legal representatives in all immigration courts that remain open, and to permit legal orientation and know-your-rights programming to proceed through VTC capacity to the greatest extent possible. We make these

¹ WHO Director General Tedros Adhanoml, Opening remarks at the media briefing on COVID-19, March 11, 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>

² Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19). March 13, 2020, <https://www.whitehouse.gov/presidential-actions/procamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

³ The President's Coronavirus Guidelines for America (March 2020), *available at* https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf

recommendations in light of the decision by EOIR and ICE to continue detention and docketing practices that put people's health at risk.⁴

We are particularly alarmed by the new ICE policy that we understand will be going into effect on Monday, March 23 requiring that attorneys bring their own PPE (Personal Protective Equipment) in order to be allowed to enter ICE detention facilities.⁵ The suggestion that such equipment be diverted from first responders who are already facing such a critical shortage is particularly unreasonable and unhelpful when ICE and EOIR could instead choose to uniformly utilize telephonic and VTC legal appearance procedures with which they already have substantial experience.

Many if not most of the facilities used by ICE to confine people for immigration purposes do not provide meaningful ways for legal service providers to speak with detained individuals remotely.⁶ When facilities *do* allow confidential legal calls, their capacity is limited to one or two phones at any given time for the entire ICE population, making calls nearly impossible to schedule. The lack of federal direction to remedy this substantial due process violation is leading to a patchwork of conflicting and insufficient responses regionally and locally.

Similarly, immigration courts and immigration judges across the country do not have a consistent practice of allowing legal representatives to appear on behalf of their clients telephonically. We appreciate the guidance issued by Director McHenry on March 18, 2020 reminding immigration judges that they may issue standing orders regarding telephonic appearances by representatives.⁷ However, immigration courts which remain open for conducting detained or MPP hearings have not consistently established the practices suggested by this memorandum. At the time of this writing, the undersigned are aware of standing orders allowing any party to appear telephonically in some or all matters without prior written motion in only the following courts: Adelanto,

⁴ Many of our organizations have concerns with the use of VTC technology for immigration court hearings given the significant due process concerns inherent in its use; we nonetheless strongly offer these recommendations in the unique context of the national emergency constituted by the COVID-19 pandemic.

⁵ U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19* <https://www.ice.gov/covid19> (“ICE/ERO now requires all legal visitors, CODELs, and STAFFDELs to provide and wear personal protective equipment (PPE) (disposable vinyl gloves, N-95 or surgical masks, and eye protection) while visiting any detention facility. ICE will continue to collaborate with the CDC, IHSC, and its network of care providers to provide updates and revise procedures as necessary.”)

⁶ Carl Takei & Julia Harumi Mass, *Forget About Calling A Lawyer Or Anyone at All if You're in an Immigration Detention Facility*, ACLU.org, June 15, 2016, <https://www.aclu.org/blog/immigrants-rights/deportation-and-due-process/forget-about-calling-lawyer-or-anyone-all-if>.

⁷ Executive Office for Immigration Review, Policy Memorandum 20-10, *Immigration Court Practices During the Declared National Emergency Concerning the COVID-19 Outbreak (March 18, 2020)*, <https://www.justice.gov/eoir/file/1259226/download>.

Atlanta, Chicago, Elizabeth, Hartford, Las Vegas, Tucson, and York.⁸ In contrast, other courts and court systems around the country have taken much more bold and decisive action to protect their employees, parties, and the public,⁹ while the immigration court system has lagged behind.

To ensure consistent national practice across all immigration courts that remain open during this public health crisis, we urge EOIR to go further than the March 18 guidance and require that EOIR immediately authorize telephonic or VTC appearance by legal representatives (without onerous conditions like waiving evidentiary objections) in all courts that remain open during this public health crisis.

We as legal service providers should not be asked to make the difficult choice to put our clients, ourselves, and our families at risk because ICE and EOIR refuse to employ simple and effective ways for us to speak confidentially by phone or VTC with individuals who need legal assistance. Our inability to have those conversations and appear in court in a safe way during a pandemic is impeding our ability to meaningfully represent the individuals we serve.

There is no excuse for failing to immediately implement nationwide consistent and confidential mechanisms for legal service providers to conduct intakes, prepare individuals detained in ICE custody, and allow remote appearance before all immigration courts.

We urge EOIR to issue a new policy memorandum with blanket authority for the duration period of this national public health emergency that:

- Restricts public access to physical court installations. Only EOIR court personnel should be allowed in the court.
- Authorizes attorneys and representatives to appear telephonically at any hearings, dispensing with a requirement for a written motion and replacing it with an instruction to email the clerk of the corresponding court.
- Grants automatic continuances when requested, dispensing with the requirement for a formal written motion.
- Waives presence of represented respondents for bond hearings and master calendar hearings unless respondents request otherwise¹⁰.

⁸ Executive Office for Immigration Review, *Immigration Court Practice Manual*, Appendix R-1 <https://www.justice.gov/eoir/page/file/1259631/download>.

⁹ For example: The Supreme Court of the United States is closed to the public until further notice and the Court has issued a standing order extending many filing deadlines. <https://www.supremecourt.gov/>. The Fifth Circuit Court of appeals has waived the requirement for paper filing. <http://10.205.1.61/docs/default-source/default-document-library/order-1-clerks-office-covid-19.pdf>

¹⁰ See 8 C.F.R. 1003.25(a).

- Requires courts to arrange respondents' appearance at bond and master calendar hearings by telephone or VTC during the extent of the COVID-19 national emergency.
- Disallows reopening of physical court installations until EOIR can ensure adequate procedures and supplies to disinfect courtrooms.
- Prioritizes adjudication of bond hearings over all other hearings to allow for quick release where possible.
- Authorizes detained merits hearings to go forward if the respondent and legal representative wish to do so.
- Ceases issuance of *in absentia orders*.
- Automatically tolls any deadline imposed by statute, regulation, local rule, standing order, or policy guidance.

In addition, EOIR and ICE should act to:

- Ensure that free, unmonitored phone calls are made available to all immigrants in detention, *at any time*, to contact attorneys or legal service providers in a sufficiently private space to protect confidentiality. All facilities (including CDFs, IGSAAs, DIGSAAs, and SPCs) must instruct staff to be available to accommodate requests from legal service providers to schedule time-certain private calls with clients. Sufficient staffing must be made available on the facility phone lines so attorneys and legal service providers can reach an operator to schedule such calls.
- Facilities should all be equipped to allow individuals in custody to have free video-conferencing sessions with legal service providers (via tablet or other mechanisms) in private spaces to protect confidentiality to engage in case preparation.¹¹
- Ensure that non-profit organizations providing legal orientation programming or know-your-rights programming are permitted broad and flexible access to provide group presentations by video-conference and to schedule and receive free calls/televideo conferences from individuals in custody for individual orientations.
- Legal service providers, law firms, and attorneys providing pro bono legal services should be permitted broad, flexible access to schedule and receive free phone calls to conduct intake and screenings to consider representation and exchange confidential legal mail with clients via fax.
- Provide secure internet services to ensure providers are able to conduct interactive services.
- Issue directives to staff encouraging flexibility by ICE and facility staff to permit free attorney/client communication and communication by legal service providers for the

¹¹ ICE's National Detention Standards (NDS) require one telephone for every 25 people in detention and the same ratio should be adopted for televideo access in light of the current pandemic.
<https://www.ice.gov/doclib/dro/detention-standards/pdf/teleacc.pdf>.

purpose of intake without signature on ordinarily required forms including but not limited to the ICE privacy waiver, the EOIR-28, and the G-28.

Sincerely,

Adelante Alabama Worker Center
Advocates for Basic Legal Equality, Inc.
Al Otro Lado
Aldea - The People's Justice Center
Allies for Immigration Justice
Alston & Bird LLP
American Immigration Council
American Immigration Lawyers Association
Athens Immigrant Rights Coalition
Boston University Immigrants' Rights and Human Trafficking Program
Brooklyn Defender Services
Bronx Defenders
Capital Area Immigrants' Rights (CAIR) Coalition
Catholic Charities of Southern New Mexico
Center for Gender & Refugee Studies
Center for Victims of Torture
Center Global, a Program of the DC LGBT Community Center
Children's Legal Center
Church of Our Saviour/La Iglesia de Nuestro Salvador
Coalition on Human Needs
Columbia Law School Immigrants' Rights Clinic
Community Immigration Law Center
Community Justice Exchange
Detention Watch Network
Dignidad Inmigrante en Athens
Dilley Pro Bono Project
Dominican Development Center, Inc.
Dominican Sisters of Sinsinawa, Wi. Immigrant and Refugee Committee
East End Cares
Families For Freedom
Fenwick & West LLP
Florence Immigrant & Refugee Rights Project
Freedom for Immigrants
Georgia Asylum & Immigration Network (GAIN)

HIAS Pennsylvania
HIAS, Inc.
Human Rights First
Human Rights Initiative of North Texas
Immigrant and Non-Citizen Rights Clinic, CUNY School of Law
Immigrant Defenders Law Center
Immigrant Families Together
Immigrant Justice Clinic University of Wisconsin Madison
Immigrant Justice Idaho
Immigrant Legal Advocacy Project
Immigration Counsel
Infant and Early Childhood Mental Health Resource of Georgia
ISLA: Immigration Services and Legal Advocacy
Juntos
Kitsap Immigrant Assistance Center
L&L Immigration Law, PLLC
Law Office of Daniel Gracey
Lawyers for Good Government, Georgia Chapter
Legal Aid Justice Center
Loyola University College of Law
Manos: Migrantes Apoyados, No Olvidados
Mariposa Legal, a COMMON Foundation program
McCrummen Immigration Law Group
Mid-South Immigration Advocates
MomsRising
Morris County Organization For Hispanic Affairs
NASW-NJ
National Association of Social Workers
National Immigrant Justice Center
National Immigration Project of the National Lawyers Guild
Neighbors Link Community Law Practice
NELSON | SMITH, LLP
NETWORK Lobby for Catholic Social Justice
New Haven Legal Assistance Association
New Mexico Immigrant Law Center
New Sanctuary Movement of Philadelphia
New York Immigration Coalition
Northern Illinois Justice for Our Neighbors
Ohio Immigrant Alliance

Park View Farmers Market
PATHWAYS VT
Pennsylvania Immigration Resource Center
Perez McGill Law Firm PLLC
Political Asylum Immigration Representation (PAIR) Project
RAICES
Reformed Church of Highland Park
Reggie Smith Law
Sanctuary for Families
Santa Fe Dreamers Project
Sharon Barr Consulting
SIFIC (Support for Immigrant Families in Crisis)
Sisters of Notre Dame de Namur
Skylight Engagement, Inc.
Snohomish Immigration Advocacy
Southern Poverty Law Center
St. George's Episcopal Church, Hawthorne
Stanford Law School
Stephenson & Fleming, LLP
Still Waters Anti-Trafficking Program
Stratton Immigration
Stroock & Stroock & Lavan
Sueños Sin Fronteras
Tahirih Justice Center
Terra Firma, a program of Montefiore Medical Center and Catholic Charities
The Resurrection Project
Transformations CDC
Transnational Legal Clinic, University of Pennsylvania Carey School of Law
Undocumented Partnership Task Force (N. Georgia Conf. UMC)
University of Maryland Carey Immigration Clinic
University of Michigan Law School
U.S. Legal Solutions, LLC
Vanderbilt University School of Medicine
Virginia Coalition for Immigrant Rights
Virginia Coalition of Latino Organizations
Virginia Coalition of Latino Organizations
Whidbey Indivisible RAIN (Refugee and Immigrant Network)
Wilco Justice Alliance (Williamson County, TX)
Witness at the Border

Exhibit F

March 26, 2020

The Honorable William P. Barr
Attorney General
U.S. Department of Justice

James McHenry
Director
Executive Office for Immigration Review

Submitted via email

**RE: THE DOJ MUST IMMEDIATELY CLOSE ALL IMMIGRATION COURTS
DURING THE COVID-19 PANDEMIC**

Dear Attorney General Barr and Director McHenry,

Following [previous calls](#) by the National Association of Immigration Judges (NAIJ), the American Federation of Government Employees (AFGE) Local 511 (ICE Professionals Union), and the American Immigration Lawyers Association (AILA) for the temporary closure of all immigration courts, we, the undersigned international, national, state, and local immigration, civil rights, faith-based, government accountability, and labor organizations urge the U.S. Department of Justice (DOJ) to immediately close all 68 Immigration Courts operated by the Executive Office for Immigration Review (EOIR) in adherence with current public health protocols regarding the COVID-19 virus.

On the evening of March 17, EOIR [postponed all non-detained hearings](#) and recently [postponed all of the Migrant Protection Protocol hearings \(MPP\)](#) scheduled through April 22, 2020. However, more aggressive action is needed. While these policies are a step in the right direction, they fall far short of the required action called for by this pandemic emergency. The detained courts must also be closed to in-person hearings in order to minimize the spread of the virus, slow the rate of new infections, and to avoid overwhelming local resources.

Given the particular vulnerability of respondents in detained settings, the use of telework, which has been advocated by the Administration, can and should be quickly put in place. Immigration Judges stand ready and able to work to ensure priority matters, including detained bond matters, are addressed using technological tools. DOJ should permit all detained respondents to immediately receive telephonic bond redetermination hearings with teleworking judges and allow supporting documents 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.

The urgency for immediate, decisive action in this matter cannot be overstated. Every link in the chain that brings individuals to the court - from the use of public transportation, to security lines, crowded elevators, cramped cubicle spaces of court staff, packed waiting room facilities in the courthouses, and inadequate sanitizing resources at the courts - place lives at risk.

Every state and the District of Columbia have declared a state of emergency giving government leaders the opportunity to implement bold and unprecedented measures to slow and eventually eliminate the spread of the virus. Some officials are releasing prisoners, allowing them to shelter in place at home. Cities, county, and state governments have moved swiftly to implement stay at home orders to ensure the protection of community members from this highly communicable virus. These measures include the scaling back of mass transit conveyances to most urban centers where the immigration courts are located, creating significant logistical problems for anyone needing to access the courts. On March 21, the Department of Homeland Security (DHS) [announced](#) that it will now require all legal visitors to provide and wear personal protective equipment (PPE) (disposable vinyl gloves, N-95 or surgical masks, and eye protection) in order to enter any detention facility, despite the nationwide shortage of PPE.

Yet EOIR continues to operate courts in a business-as-usual manner, placing court personnel, litigants, and all community members in harm's way. To make matters worse, DOJ and EOIR decision-making has been opaque, with inadequate information being released, causing confusion and leading to litigants showing up at hearings that are cancelled without notice.

DOJ's current response to the COVID-19 pandemic and its spread is frighteningly disconnected from the realities of our communities, and the advice of local leaders and scientific experts. **DOJ must immediately implement the temporary closure all immigration courts.** Failing to take this action now will exacerbate a once-in-a-century public health crisis and lead to a greater loss of life.

If you have any questions, please do not hesitate to contact Laura Lynch, Senior Policy Counsel, AILA (llynch@aila.org), Judge Ashley Tabaddor, President, NAIJ (ashleytabaddor@gmail.com), or Fanny Behar-Ostrow, President, AFGE Local 511 (fbehar1@gmail.com).

Sincerely,

Advocates for Basic Legal Equality, Inc.
America's Voice
American Federation of Government Employees (AFGE) Local 511
American Immigration Council
American Immigration Lawyers Association (AILA)
Americans for Immigrant Justice, Inc.
Amnesty International USA
Arizona Coalition to End Sexual and Domestic Violence
Asian Pacific American Labor Alliance, AFL-CIO
Asian Pacific Institute on Gender-Based Violence
ASISTA
Association of Deportation Defense Attorneys, Inc.
Ayuda
Capital Area Immigrants' Rights (CAIR) Coalition
Catholic Legal Immigration Network, Inc.
Center for Gender & Refugee Studies

Center for Victims of Torture
Central American Resource Center
Coalition for Humane Immigrant Rights (CHIRLA)
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
End Domestic Abuse Wisconsin
Evangelical Lutheran Church in America
Federal Bar Association Immigration Law Section
**Disclaimer, this is the position of the Immigration Law Section and not the Federal Bar Association as a whole.*
Freedom Network USA
Government Accountability Project
Her Justice
HIAS
Human Rights First
Human Rights Initiative of North Texas
Illinois Coalition Against Domestic Violence
Immigrant Families Together
Immigration Equality
International Federation of Professional and Technical Engineers
International Rescue Committee
InterReligious Task Force on Central America
Just Neighbors
Justice for Our Neighbors-Michigan
Las America's Immigrant Advocacy Center
Latin America Working Group
Leadership Conference of Women Religious
League of United Latin American Citizens
Legal Aid Justice Center
Montana Coalition Against Domestic and Sexual Violence
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Immigration Judges
National Council of Jewish Women
National Justice for Our Neighbors
National Latina Institute for Reproductive Justice
Nebraska Coalition to End Sexual and Domestic Violence
Neighbors Immigration Clinic
NETWORK Lobby for Catholic Social Justice
New York Immigration Coalition
New York Justice for Our Neighbors
Northern Illinois Justice for Our Neighbors
Ohio Immigrant Alliance
Pax Christi USA
Restoration Immigration Legal Aid
Rian Immigrant Center
Round Table of Former Immigration Judges
Santa Fe Dreamers Project
Sisters of Mercy of the Americas Justice Team

South Texas Human Rights Center
Tennessee Justice for Our Neighbors
The Florence Immigrant & Refugee Rights Project
The Leadership Conference on Civil and Human Rights
Ujima Inc: The National Center on Violence Against Women in the Black Community
Vermont Network Against Domestic and Sexual Violence
Virginia Coalition for Immigrant Rights
Virginia Coalition of Latino Organizations
Virginia Interfaith Center for Public Policy
Washington Office on Latin America
Washington State Coalition Against Domestic Violence
Wellspring United Church of Christ
Young Center for Immigrant Children's Rights