



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.

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- **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.