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March 21, 2020

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

James McHenry
Director
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike
Falls Church, VA 22041

Dear Attorney General Barr and Director McHenry:

I write to echo calls that immigration courts be closed in light of the coronavirus disease 2019 (COVID-19) pandemic, which becomes more serious by the day. Earlier this week, a broad coalition of stakeholders—the American Immigration Lawyers Association, 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—made this same request.¹ Yet, as this public health emergency escalates, the Department of Justice still has not closed immigration courts. It is past time to do so.

There have been more than 16,000 reported COVID-19 cases and 200 deaths in the United States.² All parts of the federal government must acknowledge the seriousness of the pandemic and take aggressive action to protect our communities. Earlier this week, Director McHenry issued a policy memorandum that appears to acknowledge the risks of holding in-person proceedings. The memorandum specifies requirements for self-reporting at security checkpoints at the courts and “encourage[s] immigration judges to resolve as many cases as practicable without the need for a hearing and, thus, to minimize contact among individuals involved in immigration proceedings.”³ The Executive Office for Immigration Review (EOIR) has also postponed hearings for those who are not in detention⁴ and closed eleven immigration courts.⁵ These are steps in the right direction, but they also demonstrate EOIR’s recognition of the risks of continuing to hold proceedings in immigration courts—forcing individuals into

¹ NAIJ, AFGE Local 511, and AILA, “Immigration Judges, Prosecutors and Attorneys Call for the Nationwide Closure of All Immigration Courts,” March 15, 2020, <https://www.naij-usa.org/images/uploads/newsroom/2020.03.15.00.pdf>.

² Center for Systems Science and Engineering, Johns Hopkins University, “Coronavirus COVID-19 Global Cases,” <https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>.

³ Director James McHenry, “Immigration Court Practices During the Declared National Emergency Concerning the COVID-19 Outbreak,” Policy Memorandum, March 18, 2020, <https://www.naij-usa.org/images/uploads/newsroom/2020.03.18.00.pdf>.

⁴ *Id.* at n. 2.

⁵ Department of Justice, Executive Office for Immigration Review, “EOIR Operational Status During Coronavirus Pandemic,” <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>.

situations where they cannot practice social distancing and increasing the risk of COVID-19 transmission.

EOIR has failed to take the necessary step of closing all immigration courts—a measure that would be in line with the President’s Coronavirus Guidelines for America, which urge Americans to avoid gatherings of more than 10 people and to “Work ... FROM HOME whenever possible.”⁶ And EOIR can take steps to mitigate the hardship imposed by this step—for example, by conducting bond hearings via telephone or videoconference and exploring other telework and technological solutions, along the lines that the coalition of stakeholders suggested.⁷

Your inaction is irresponsible and is putting people’s health at risk. Reportedly, an immigration judge in Denver has reportedly displayed COVID-19 symptoms, and an immigration attorney in Atlanta has tested positive for COVID-19 “just one day after he appeared in a crowded courtroom.”⁸ According to a news report based on statements from a court employee in New York City, “In recent days members of the public have been showing up at the New York courts looking visibly unwell. Yet only the most basic hygiene measures have been taken.”⁹ Courtrooms and waiting areas remain full of people.¹⁰ Limited availability of testing means that we do not know who is sick and potentially transmitting the virus.¹¹

I urge you to act responsibly and immediately close all immigration courts until the health risks of keeping them open have diminished. Thank you for your consideration.

Sincerely,



Elizabeth Warren
United States Senator

⁶ White House, “The President’s Coronavirus Guidelines for America: 15 Days to Slow the Spread,” March 16, 2020, https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

⁷ NAIJ, AFGE Local 511, and AILA, “Immigration Judges, Prosecutors and Attorneys Call for the Nationwide Closure of All Immigration Courts,” March 15, 2020, <https://www.naij-usa.org/images/uploads/newsroom/2020.03.15.00.pdf>.

⁸ BuzzFeed News, “Immigration Judges Across The US Are Staying Home After The Coronavirus Hit Courtrooms,” Melissa Segura and Hamed Aleaziz, March 18, 2020, <https://www.buzzfeednews.com/article/melissasegura/immigration-court-judges-coronavirus>.

⁹ Guardian, “Trump keeps immigration courts open despite coronavirus risks,” Ed Pilkington, March 19, 2020, <https://www.theguardian.com/us-news/2020/mar/19/us-immigration-courts-open-coronavirus-risks>.

¹⁰ BuzzFeed News, “Immigration Judges Across The US Are Staying Home After The Coronavirus Hit Courtrooms,” Melissa Segura and Hamed Aleaziz, March 18, 2020, <https://www.buzzfeednews.com/article/melissasegura/immigration-court-judges-coronavirus>.

¹¹ Wall Street Journal, “America Needed Coronavirus Tests. The Government Failed,” Christopher Weaver, Betsy McKay, and Brianna Abbott, March 19, 2020, <https://www.wsj.com/articles/how-washington-failed-to-build-a-robust-coronavirus-testing-system-11584552147>.