

March 20, 2020

The Hon. Christopher A. Santoro
Chief Immigration Judge
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041

Via Email

Dear Chief Immigration Judge Santoro:

We are law school professors who teach immigration clinics that provide pro bono representation in immigration courts around the country. We write to urge you to immediately develop and implement proactive plans for the prevention and management of COVID-19 at all United States immigration courts. In this letter, we offer several recommendations for such protective measures.

1. Order Release of Individuals Held in Detention and Temporarily Close the Immigration Courts

Immigration courts are crowded spaces that pose a serious risk of COVID-19 contagion. Proceeding with any immigration cases at this time exposes judges, respondents, their attorneys, ICE attorneys, law students, witnesses, correctional officers, and court staff to a risk of infection. An immigration attorney in Atlanta recently tested positive a day after appearing in court, and a Denver immigration judge has symptoms of COVID-19.¹ Many immigration judges who fear contracting and spreading the disease have taken matters into their own hands by staying home.² Temporarily closing all of the immigration courts is the best way for EOIR to contain the spread of COVID-19. The National Association of Immigration Judges, American Immigration Lawyers Association, and ICE Professionals Union have all called for the closure of immigration courts.³

For individuals in immigration detention, however, closing the courts would prolong their detention, where they are highly vulnerable to infection due to close quarters, poor ventilation,

¹ Melissa Segura and Hamed Aleaziz, Immigration Judges Across the US Are Staying Home After Coronavirus Hit Courtrooms, BuzzFeed News, March 17, 2020, https://www.buzzfeednews.com/article/melissasegura/immigration-court-judges-coronavirus?fbclid=IwAR0j_hlurwj1div-iyfb_bL3jc1mvy4LpxbfuhMUvrIkKdmSX8fleHJR7qQ.

² *Id.*

³ 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, <https://www.aila.org/advo-media/aila-correspondence/2020/ijs-prosecutors-and-attorneys-call-for-nationwid?fbclid=IwAR2iBjVM3v6vFE2NHXe1MQNc9N7h-R6jD98MLE4Js5HaQtgKhZw9db724P0>.

and limited access to health care. Contagious diseases, such as measles,⁴ mumps,⁵ chicken pox,⁶ influenza,⁷ and tuberculosis⁸ have all spread among individuals in immigration detention. Recently, three children died of flu in detention.⁹ There have been nine deaths already in immigration custody since October 2019, including two just this month.¹⁰ In December 2019, Congress opened an investigation into the medical care provided inside detention facilities.¹¹ Due to the grave threat that COVID-19 presents to the health and safety of detained individuals, thousands of medical professionals have called for their immediate release.¹² Two ICE officers recently tested positive for COVID-19 at facilities in different states, creating a risk of widespread infection within those facilities and nearby areas.¹³

In order to protect everyone's health, EOIR should order the release of individuals held in immigration detention without requiring individualized determinations. This measure would help protect both the health and due process rights of detained individuals, while also protecting the health of correctional staff at detention facilities, surrounding communities, and health care providers. For individuals subject to mandatory detention, we urge EOIR to interpret the term "custody" in the Immigration and Nationality Act to include electronic monitoring through the ISAP Program or other alternatives to detention, at least in this emergency situation where detention is life-threatening and disproportionate to the need for confinement, raising serious

⁴ Centers for Disease Control and Prevention, Notes from the Field: Measles Outbreak at a United States Immigration and Customs Enforcement Facility – Arizona, May-June 2016 (May 26, 2017), <https://www.cdc.gov/mmwr/volumes/66/wr/mm6620a5.htm>.

⁵ Centers for Disease Control and Prevention, Notes from the Field: Mumps in Detention Facilities that House Detained Migrants – United States, September 2018-August 2019 (Aug. 30, 2019), <https://www.cdc.gov/mmwr/volumes/68/wr/mm6834a4.htm>.

⁶ Mica Rosenberg, Kristina Cooke, Mumps, Other Outbreaks Force U.S. Detention Centers to Quarantine Over 2,000 Migrants, Reuters, March 10, 2019, <https://www.reuters.com/article/us-usa-immigration-outbreaks/mumps-other-outbreaks-force-us-detention-centers-to-quarantine-over-2000-migrants-idUSKBN1QR0EW>.

⁷ *Id.*

⁸ O'Neil Institute for National and Global Health Law and Stop TB Partnership, *Migration, Tuberculosis, and the Law: An Urgent Need for a Rights-Based Approach* (2018), <https://oneill.law.georgetown.edu/media/Migration-Tuberculosis-and-the-Law-An-Urgent-Need-for-a-Rights-Based-Approach.pdf>.

⁹ Hannah Gold, Children Keep Dying of the Flu in Immigration Custody, The Cut (Dec. 11, 2019), <https://www.thecut.com/2019/12/children-keep-dying-of-the-flu-in-immigration-custody.html>.

¹⁰ Daniella Silva, Guatemalan Woman Died in ICE Custody in Texas, Eighth Death Since October, NBC News, March 10, 2020, <https://www.nbcnews.com/news/us-news/guatemalan-woman-dies-ice-custody-texas-eighth-death-october-n1154136>; Associated Press, Man Dies by Apparent Suicide in ICE Family Detention Center, March 19, 2020, <https://abcnews.go.com/US/wireStory/man-dies-apparent-suicide-ice-family-detention-center-69685614>.

¹¹ Hamed Aleaziz, Congress Has Launched an Investigation into the Medical Care of Immigrant Detainees, BuzzFeed News, Dec. 23, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/congress-investigation-immigrant-detainees-medical-care>.

¹² Open Letter from Medical Professionals Regarding COVID-19, https://docs.google.com/document/d/1eNyNmy-622OjVILFSwgypITPK0eAt5yLgSkS_7_0vv8/edit.

¹³ Emily Kassie, The Marshall Project, First ICE Employees Test Positive for Coronavirus, March 19, 2020, <https://www.themarshallproject.org/2020/03/19/first-ice-employees-test-positive-for-coronavirus?fbclid=IwAR3x9DPIIOjKP5vq8wkofpJq7NOVvVZYiJDtlCAzm6v3UaLSXQ50-PrkZSk>.

constitutional concerns.¹⁴ See *Reno v. Koray*, 515 U.S. 50, 59-60 (1995) (supporting the proposition that “custody” does not require detention); *Matter of Aguilar*, 24 I&N Dec. 747, 752 (BIA 2009) (recognizing that “a person who is in custody is not necessarily in detention [and] one who is in detention is not necessarily in custody”); *Matter of Toro*, 17 I&N Dec. 340 (BIA 1980) (explaining the importance of considering the Fifth Amendment’s fundamental fairness requirements).

Other courts, prosecutors’ offices, and jails have already issued policies and taken active steps to release detained populations to limit COVID-19 contagion. For example, over 200 people have been released from Ohio’s Cuyahoga Jail, 600 people have been released by the Los Angeles County Sheriff, and 120 people have been released by the Washington County Jail in Oregon.¹⁵ In Alameda County, California, the Sheriff’s Office released 67 “nonviolent offenders” on their own recognizance and another 247 people with electronic monitoring or other forms of supervised release.¹⁶ Releasing immigration detainees would likewise protect public health and permit courts to close without prolonging detention.

2. Prioritize Bond Hearings and Grant Subsequent Bond Redetermination Hearings Based on the Changed Circumstances Presented by the COVID-19 Pandemic

At a minimum, we ask that you ensure that all custody redetermination (bond) hearings are scheduled as a priority to guarantee that individuals eligible for release from detention can secure release as quickly as possible. Currently, detained dockets are proceeding as usual in many immigration courts. We recognize that prioritization of custody hearings will require postponement of master calendar hearings. Given the severity of the COVID-19 situation, however, such action is warranted.

Adapting the courts’ schedule to prioritize bond hearings would be consistent with measures taken by state and county courts around the country to limit their hearings to essential proceedings such as bond. Federal courts are also responding to the pandemic by limiting in-person hearings, including by cancelling oral arguments.¹⁷ Even the U.S. Supreme Court took the extraordinary step of cancelling oral arguments for the month of March.¹⁸

¹⁴ See Philip L. Torrey, *Rethinking Immigration’s Mandatory Detention Regime: Politics, Profit, and the Meaning of “Custody,”* 48 U. MICH. J. L. REFORM 879 (2015) (arguing that the term “custody” in the mandatory detention statute should be interpreted broadly to include alternatives to detention and citing relevant authorities).

¹⁵ Conrad Wilson, *Advocates and Sheriffs Worry Prison, Jails Could Be Incubators for COVID-19*, Oregon Public Broadcasting, March 17, 2020, <https://www.opb.org/news/article/prison-jails-incubators-for-covid-19-advocates-worry/>.

¹⁶ Robert Salonga, Angela Ruggiero, and Nate Gatrell, *Bay Area Courts, Authorities Ramp Up Release of Inmates to Stem COVID-19 Risks in Jails*, The Mercury News, March 19, 2020, <https://www.mercurynews.com/2020/03/19/bay-area-courts-authorities-ramp-up-release-of-inmates-to-stem-covid-19-risks-in-jails/>.

¹⁷ Robert Loeb, Katie Kopp and Melanie Hallums, *The Federal Courts Begin to Adapt to COVID-19*, Lawfare, March 18, 2020, <https://www.lawfareblog.com/federal-courts-begin-adapt-covid-19>.

¹⁸ *Id.*

We also believe that COVID-19 constitutes a material change in circumstances that allows judges to reconsider bond redeterminations. *See* 8 C.F.R. 1003.19I (allowing a subsequent bond determination upon showing that the respondent's circumstances have "changed materially since the prior bond redetermination"). This would allow individuals who were previously denied bond, or who cannot afford to post a bond that was set, to have another opportunity at being released. Under the present circumstances, EOIR should waive the requirement under 8 C.F.R. § 1003.19(e) that subsequent bond redetermination requests be made in writing and allow such requests to also be made orally in open court or telephonically. *Cf.* 8 C.F.R. § 1003.19(b) (allowing initial bond redetermination requests to be "made orally, in writing, or, at the discretion of the Immigration Judge, by telephone").

Any custody hearing that was cancelled or postponed in the past two weeks should be heard immediately. Any new hearing requests, including reconsideration requests, should be scheduled within three days. For all motions related to custody hearings, EOIR should waive the traditional 10-day period for the government to respond to a motion. If ICE attorneys proffer evidence at a custody hearing scheduled in this compressed time frame, respondents should be given a reasonable opportunity to review and respond to it.

Further, we ask that judges consider release on recognizance, minimal bonds, or electronic monitoring (the ISAP program) to mitigate delays in release caused by obstacles to securing higher bond amounts. *See Matter of Aguilar*, 24 I&N Dec. at 750 (confirming that "an alien may request a bond hearing 'at any time' to ameliorate the conditions under which he or she may be released from DHS custody") (quoting 8 C.F.R. § 1236.1(d)(1)).

With respect to children in custody, we urge EOIR to immediately cancel all master calendar hearings. These hearings should be reset at a future date when COVID-19 no longer poses a threat to the children during transportation, in detention facilities, and in court.

3. Facilitate Appearances by Counsel and Witnesses with Videoconferencing and Telephone

Given the urgency of the current situation, we suggest using videoconferencing and telephone to handle bond redetermination hearings. While the use of remote appearances for respondents in immigration court raises significant concerns,¹⁹ in this emergency situation, it may unfortunately be the only way for respondents who are held in detention to secure a bond hearing and, thus, their release from the dangers posed by COVID-19 inside detention. The Governor of California, for example, has just ordered all Californians to shelter at home, making remote technology now the only way that attorneys or witnesses may appear in court on behalf of

¹⁹ Ingrid Eagly, *Remote Adjudication in Immigration*, 109 NORTHWESTERN L. REV. 933 (2015) (finding that detained respondents who appeared by videoconferencing were more likely to be deported when compared to detained respondents who appeared in person).

vulnerable respondents.²⁰ Finally, we urge all the courts to allow for video or telephonic appearance of representatives and witnesses without the need to file an advanced motion.²¹ The immigration courts in Pearsall, San Antonio, and Adelanto have already issued standing orders allowing for such telephonic appearances without filing motions (attached). Language-access protections should, of course, be vigorously applied in all proceedings, including those utilizing VTC or telephonic appearances.

4. Temporarily Stop Issuing Removal Orders

Finally, we urge the immigration courts to temporarily stop issuing removal orders. Deportations to other countries risk spreading COVID-19 around the globe and possibly even reintroducing it in places where it has been contained. An individual held in detention who has COVID-19 could infect other individuals on the flight or bus, as well as in the receiving country. Simply taking temperatures prior to boarding is not an effective way to screen for the disease, as infected individuals can be asymptomatic.

ICE also has a history of deporting individuals with contagious diseases without any plans for continuity of care, exacerbating the risk of further contagion.²² If individuals with COVID-19 are deported to other countries without clear plans for their quarantine and/or treatment, the disease will spread quickly.

Recognizing these risks, some countries such as Guatemala have already stopped accepting deportees, and other countries are likely to follow. EOIR can address this issue proactively by temporarily stopping the issuance of removal orders.

Thank you in advance for your consideration. We ask to be notified of any actions you take regarding our requests. Professors Fatma Marouf (fatma.marouf@law.tamu.edu, 310-431-6693), Elissa Steglich (esteglich@law.utexas.edu, 512-232-1387), and Geoffrey Hoffman (ghoffman@central.uh.edu, 713-743-2094) will serve as our points of contact.

Signed, with institutional affiliation listed for identification purposes only, by the following:

Evangeline G. Abriel, Clinical Professor of Law, Santa Clara University School of Law

Sabrineh Ardalan, Clinical Professor of Law & Director, Harvard Immigration and Refugee Clinical Program, Harvard Law School

²⁰ Taryn Luna, Gov. Gavin Newsom Orders All Californians to Stay at Home, L.A. Times, March 19, 2020, <https://www.latimes.com/california/story/2020-03-19/gavin-newsom-california-1-billion-federal-aid-coronavirus>.

²¹ Fatma Marouf and Luz Herrera, *Technological Triage of Immigration Cases* (forthcoming in the Florida Law Review) (recommending that counsel be allowed to appear by video to expand access to representation and facilitate adjudication), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3463393.

²² O'Neil Institute for National and Global Health Law and Stop TB Partnership, *supra* note 8.

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cc: Matthew T. Albence
Deputy Director and Senior Official
Performing the Duties of the Director
Immigration and Customs Enforcement
U.S. Department of Homeland Security

Via Email

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
SAN ANTONIO IMMIGRATION COURT (ANNEX)
106 S. ST MARY'S STREET, SUITE 600
SAN ANTONIO, TEXAS 78205**

STANDING ORDER OF THE SAN ANTONIO IMMIGRATION COURT ANNEX

Due to the COVID-19 pandemic, the San Antonio Immigration Court Annex is implementing the below safety precautions until further notice:

1. In-person appearances in the courtroom are limited to the following individuals: Respondent, Respondent's counsel, DHS counsel, Court interpreter, essential EOIR staff and security personnel. See ICPM § 4.9(a)(ii) (citing 8 C.F.R. § 1003.27(b)).
2. Video conferencing ("VTC") will be utilized to the greatest extent possible, and any necessary witnesses will be allowed to appear by telephone. See ICPM § 4.7(b).
3. Limited exceptions to the above orders may be accommodated on a case-by-case basis and must be requested by written motion prior to the day of the hearing.
4. Any individual having business in person before the Court must notify the Court immediately by telephone if any of the following apply:
 - a. The individual is displaying symptoms consistent with COVID-19 exposure
 - b. The individual has been diagnosed with COVID-19
 - c. The individual is pending results of a COVID-19 diagnostic test
 - d. Within the past 14 days, the individual has had contact with anyone who has been diagnosed with COVID-19
 - e. The individual has been asked to self-quarantine by local health authorities or a medical provider
 - f. Within the past 14 days, the individual has been in a country with a Level 3 Public Health Notice (signifying widespread, ongoing transmission) or a country subject to a Level 3 or 4 Travel Advisory based on COVID-19

No individual described in one of the above categories will be permitted into the EOIR court space.

Attorneys who would like to appear telephonically for a particular case should inform the Immigration Judge's legal assistant in advance of the hearing by email and should provide the best phone number at which to be reached.

Immigration Judge	Legal Assistant	Email Address
Adams	Tess Nye	Tess.Nye@usdoj.gov
Crossan	R.J. Reid	Robert.J.Reid@usdoj.gov
Tijerina	Gilbert Mangold	Gilbert.Mangold@usdoj.gov
Tyrakoski	Alexia Lopez	Alexia.Lopez@usdoj.gov

Effective date: March 19, 2020

Clay N. Martin
Assistant Chief Immigration Judge

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
SOUTH TEXAS ICE PROCESSING CENTER
566 VETERAN DRIVE
PEARSALL, TX 78061**

STANDING ORDER OF THE PEARSALL IMMIGRATION COURT

Due to the COVID-19 pandemic, the Pearsall Immigration Court is implementing the below safety precautions until further notice:

1. In-person appearances in the courtroom are limited to the following individuals: Respondent, Respondent's counsel, DHS counsel, Court interpreter, essential EOIR staff and security personnel. See ICPM § 4.9(a)(ii) (citing 8 C.F.R. § 1003.27(b)). No more than eight respondents will be allowed in the courtroom at any time.
2. Video teleconferencing ("VTC") will be utilized to the greatest extent possible, and any necessary witnesses will be allowed to appear by telephone. See ICPM § 4.7(b).
3. Limited exceptions to the above orders may be accommodated on a case-by-case basis and must be requested by written motion prior to the day of the hearing.
4. Any individual having business in person before the Court must notify the Court immediately by telephone if any of the following apply:
 - a. The individual is displaying symptoms consistent with COVID-19 exposure
 - b. The individual has been diagnosed with COVID-19
 - c. The individual is pending results of a COVID-19 diagnostic test
 - d. Within the past 14 days, the individual has had contact with anyone who has been diagnosed with COVID-19
 - e. The individual has been asked to self-quarantine by local health authorities or a medical provider

No individual described in one of the above categories will be permitted into the EOIR court space.

Attorneys who would like to appear telephonically for a particular case should inform the Immigration Judge's legal assistant in advance of the hearing by email and should provide the best phone number at which to be reached. Supervisory Legal Assistant Alex Quintana should be cc'd on all such e-mails.

Immigration Judge	Legal Assistant	Email Address
Martinez	Linda Parsons	Linda.Parsons@USDOJ.GOV
Alcorn	Laura Garza	Laura.Garza@USDOJ.GOV
Paulissen	Dantonio Fowler	Dantonio.Fowler@USDOJ.GOV
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Effective date: March 19, 2020

Clay N. Martin
Assistant Chief Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
US IMMIGRATION COURT
ADELANTO, CALIFORNIA

**STANDING ORDER OF THE ADELANTO IMMIGRATION COURT RELATING TO
TELEPHONIC APPEARANCES AT MASTER CALENDAR AND BOND HEARINGS**

IT IS HEREBY ORDERED that all attorneys for all parties and qualified representatives scheduled to appear for master calendar or bond hearings before the Adelanto Immigration Court may appear telephonically, without the need to file a motion for telephonic appearance.

It is counsel's responsibility to provide a telephonic number to the court staff where they can be reached for the hearing and to be available for the court's call. If the Court is unable to reach counsel by telephone for the hearing, counsel will thereafter be required to appear in-person at any scheduled hearing. For the duration of this order, parties may appear by cell phone or land line.

Any documents which counsel wishes the Court to consider during the hearing must be filed with the Court, and a copy received by opposing counsel or the pro se Respondent at least **two business days** prior to the hearing.

This order shall remain in effect until rescinded by the Court.

A handwritten signature in black ink, appearing to read 'Scott Laurent', written over a horizontal line.

Scott Laurent
Assistant Chief Immigration Judge
Adelanto, California