



March 19, 2020

Gavin Newsom  
Governor of California

Cc: Xavier Beccera  
California Attorney General

Cc: Dr. Sonia Y. Angell  
California's Public Health Officer

Cc: Dr. Charity Dean, Director  
California Department of Public Health

Dear Governor, Attorney General, and Public Health Officers,

As Local Representative for the San Francisco Immigration Court for the National Association of Immigration Judges (NAIJ), I am writing to make you aware of an ongoing crisis within the San Francisco Immigration Courts.

As you know, our nation is currently in the throes of a historic global pandemic. On March 15, 2020, the 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) called for the emergency closure for a period of two to four weeks 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. This call for action has now been joined by numerous other NGOs who represented individuals before the Court. We took this extreme action because the Department of Justice (DOJ) has been slow to respond to the spread of the COVID-19 pandemic, and the actions taken

by DOJ are not premised on transparent scientific information.

While NAIJ commends DOJ for its decision on March 18, 2020, to temporarily suspend non-detained individual and master calendar hearings, this step is plainly insufficient. In San Francisco, DOJ continues to hold hearings for detained Respondents. These hearings are attended by Immigration Judges, Respondents, attorneys for Respondents and for the DHS, witnesses, and interpreters. We are deeply concerned for the health and safety of these parties, and of the broader community since every hour we learn of more individuals who have contracted COVID-19 symptoms. Because carriers can be asymptomatic for long periods, there is simply no way to be sure these hearings are not exposing participants to the COVID-19.

Further, in San Francisco, DOJ continues to require all Judges and Court staff - at both the detained and non-detained courts - to report to work as usual. DOJ continues these operations and requirements in spite of the Shelter in Place Order issued by the Department of Public Health on March 16, 2020. To be clear, all of the Immigration Judges and Court personnel are under a mandatory directive by the City and County of San Francisco to shelter in place, *while at the same time are being ordered by the Department of Justice to continue to report to work*. Immigration Judges, Legal Assistants, Judicial Law Clerks, Security Staff, and a host of other behind-the-scenes personnel that work at the San Francisco Immigration Court are all profoundly affected by DOJ's failure to take responsible action based on the available scientific evidence.

Finally, in San Francisco, DOJ continues to accept in-person filings from the public, rather than limiting parties to filing by mail. This ill-conceived decision encourages parties to flout the Shelter in Place Order; Respondents reasonably fear negative consequences - including removal - for late filings and are more likely to come to court with documents in person. It also exposes Court staff to potentially infected attorneys and litigants who come to Court to file in person, an action DOJ expressly authorizes at this time.

By failing to close the San Francisco Immigration Courts for a reasonable period during this crisis, DOJ is failing to meet its obligations to ensure a safe and healthy environment within our City. NAIJ is mindful of the consequences a full court closure would entail and there are particularly vulnerable situations that warrant specialized considerations. For example, (a) steps should be taken to conduct immigration bond redetermination hearings telephonically during this period; (b) the Department of Justice should implement the use of telework and technological solutions which has been advocated by the Administration; and (c) the prioritization of matters where appropriate, including detained bond matters. There is no dispute that closing the courts is a difficult decision that will impose significant hardship, particularly for those in the Migrant Protection Protocols and detained Respondents. But these are extraordinary times.

On a health and safety level, it is clear that the failure to act will take a human toll that cannot be underestimated given the dire reporting coming out of the office of the President of the United States, the Centers for Disease Control, the Office of the Governor of California, and the Office of our own Mayor, London Breed.

The absence of reasonable leadership on the part of the DOJ is of grave concern to the NAIJ. At this time, given the dearth of adequate measures being taken, and the range of harms at the health and safety level as well as at the due process level, the Immigration Courts must be closed for two to four weeks, at which time public health professionals may reassess and provide updated instructions.

We thank you for your support and leadership during this time of crisis.

Sincerely,

/s/ Hon. Arwen Swink

San Francisco Immigration Court Local Representative

NAIJ