



March 9, 2020

Dear Judge Santoro,

I write to follow up and expand on prior communications the National Association of Immigration Judges (NAIJ) has had with EOIR regarding guidance and resources related to COVID-19. We have received almost none of either. As new cases of COVID-19 are diagnosed each day, NAIJ reiterates its increasing concerns about how the virus will impact our work and what steps EOIR management is taking to protect Immigration Judges, support staff and the public. As you know, our work requires us to be in close contact with the public on a daily basis, often in very large numbers and groups. Some of our respondents come from high-risk countries and even if they have not been to those countries since the outbreak, they may be in contact with those who have. Some EOIR employees are at high risk for developing serious illness, including older employees and those with chronic medical conditions. Beyond our own employees, the respondents who come before us may also be at high risk for developing serious illness. Because we order their appearance and they face the prospect of removal if they don't appear, sick respondents and respondents vulnerable to serious illness will keep coming to court unless we take action. NAIJ recognizes that this situation is dynamic and rapidly evolving, but OPM has already released preliminary guidance based on CDC recommendations. In keeping with those recommendations, NAIJ urges OCIO to implement the following steps immediately:

1. Inform all EOIR employees about the agency continuity of operations (COOP) plan as it relates to a potential pandemic. On March 3, 2020, OPM released a document entitled "Preliminary Guidance to Agencies During Coronavirus 2019 (COVID-19)": <https://www.chcoc.gov/content/preliminary-guidance-agencies-during-coronavirus-disease-2019-covid-19>. It states that:

To be prepared for COVID-19, departments and agencies must incorporate telework in their continuity of operations (COOP) plans. The Telework Enhancement Act of 2010 states that "each executive agency shall incorporate telework into the continuity of operations plan of that agency." See 5 U.S.C. § 6504(d)(1). If an agency COOP plan is in operation, that plan "shall supersede any telework policy." See 5 U.S.C. § 6504(d)(2). Therefore, agencies should immediately review their current COOP plans to ensure that telework has been fully incorporated and that as many employees as possible have been identified as telework employees in the plan, and are telework capable (or "telework ready").

While we recognize that certain Immigration Court functions may not lend themselves to telework, that does not mean that our employees should keep coming to work if other federal employees have been told to stay home because of a significant public health risk. Instead, the EOIR COOP plan must surely include a shutdown of the courts in certain circumstances. NAIJ asks that all employees be informed immediately about the current COOP plan, including what would trigger closure of one or all of the courts. NAIJ also urges EOIR to consider all appropriate periodic or short-term telework provisions for Immigration Judges located in cities, states, or regions facing acute public health situations in which federal, state, and/or local health authorities have urged “social separation” responses to the COVID-19 situation in order to slow the spread of the infection. NAIJ urges EOIR management to immediately issue public policy guidance encouraging the following:

- Encouraging all Immigration Courts to issue standing orders waiving the appearance of represented respondents at all master calendar hearings pursuant to 8 C.F.R. § 1003.25(a)(see Policy Memorandum 20-09, The Immigration Court Practice Manual and Orders (February 13, 2020), noting that the Chief Immigration Judge may approve such standing orders and make them publicly available);
- Encouraging all Immigration Courts to issue standing orders allowing for telephonic appearances of respondents and immigration defense and DHS counsel at master calendar hearings;
- Encouraging all attorneys appearing before the Immigration Courts to strictly limit in-court paper filings in order to avoid unnecessary hand-to-hand interactions in court;
- Closing Immigration Court proceedings to members of the public other than members of the news media or those whose presence would clearly be in the public interest.

These provisions should also include proactive efforts on the part of EOIR management to identify IJs who may be particularly at risk, including older IJs and those who have a pre-existing health condition. We urge EOIR management to consider providing these IJs with appropriate work assignments to limit exposure to large groups of people, including by postponing their master calendar dockets until public health officials determine that such large group functions no longer pose a serious risk.

2. Actively encourage sick employees to stay home. This is a key recommendation from the CDC's Interim Guidance for Businesses and Employers, found here: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>. To facilitate the above, announce a liberal sick leave policy for employees. The CDC recommends that employers, "ensure that your sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies." Because current guidance recommends that persons experiencing flu-like symptoms practice social self-isolation until one full day after such symptoms have ended, it may not be advisable for a sick employee to visit a physician or other health care professional to obtain documentation supporting the taking of sick leave. Therefore, we urge EOIR management to waive any requirement for documentation of

sick leave in excess of three workdays when the IJ's leave request is based on flu-like symptoms experienced by the IJ or by a family member with whom the IJ has been in close contact.

3. Send sick employees and members of the public home. The CDC "recommends that employees who appear to have acute respiratory illness symptoms (*i.e.* cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately." OPM echoes this recommendation in its guidance. ACIJs and the administrative management team must have the authority to send employees home when they are ill. Judges should also be encouraged to immediately adjourn the cases of respondents or attorneys who have apparent respiratory illness. To ensure that IJs are not incentivized to proceed with cases to meet numeric performance goals or case completion quotas, NAIJ urges EOIR management to create a dedicated case adjournment code based on public health considerations; cases so adjourned should have no negative impact on an IJs performance ratings. Given the critical importance of limiting the contacts of possibly infected persons, NAIJ also urges EOIR management to issue a formal public notice encouraging members of the immigration defense bar (including AILA) and other stakeholders to ensure that respondents and attorneys experiencing flu-like symptoms contact the applicable Immigration Court to postpone their hearings where appropriate, or to request appearances by telephone at master calendar hearings.

4. Provide appropriate cleaning and disinfectant supplies to all employees and to members of the public visiting or conducting business before the Immigration Courts. The CDC recommends that employers provide "alcohol-based hand rubs in the workplace. Ensure that adequate supplies are maintained. Place hand rubs in multiple locations or in conference rooms to encourage hand hygiene." In the Court this would mean not only providing hand sanitizer to employees, but to the public. NAIJ requests that no-touch sanitizer dispensers be placed immediately in multiple locations on each floor. Likewise, the CDC recommends that employers "Provide disposable wipes so that commonly used surfaces (for example, doorknobs, keyboards, remote controls, desks) can be wiped down by employees before each use." Additionally, because our judges and administrative staff handle such a high volume of paper submissions, EOIR should provide all employees with an adequate supply of nitrile disposable gloves.

5. Inform all employees about the plan regarding access to our buildings. OPM has stated that:

The Interagency Security Committee has established standards for day-to-day risk management of Federal facilities. State and Federal health officials are providing ongoing guidance to Federal agencies regarding control and containment of COVID-19 exposure. Based on that health guidance, the Facility Security Committee (FSC) and/or Designated Official (DO) in each Federal facility has the authority and discretion to set requirements for admission to Federal property. See 41 CFR §102-74.375. Agencies should contact their respective FSC or DO for any further developments on visitor access.

OPM states in its guidance that for FPS controlled buildings, FPS sets policy on building access. NAIJ requests that management inform us immediately if the building access policy changes at any of the court facilities.

NAIJ stands ready to assist management in protecting our employees and the public. We look forward to working closely with you as this situation evolves.

Sincerely,

The Honorable A. Ashley Tabaddor, President

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DISCLAIMER: The author is the President of the National Association of Immigration Judges. The views expressed here do not necessarily represent the official position of the United States Department of Justice, the Attorney General, or the Executive Office for Immigration Review. The views represent the author's personal opinions, which were formed after extensive consultation with the membership of NAIJ.

cc: All Immigration Judges