

Congress of the United States
Washington, DC 20515

May 4, 2020

James McHenry
Director
Executive Office for Immigration Review
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Matthew Albence
Acting Director
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th St. SW
Washington, D.C. 20536

Dear Director McHenry and Acting Director Albence:

We write to express deep concern regarding reports of due process issues inside the Aurora Immigration Courtroom as a result of COVID-19. In light of these issues, and the public safety threat of the virus, we request that the Executive Office for Immigration Review (EOIR) and U.S. Immigration and Customs Enforcement (ICE) immediately implement changes to the courtroom's rules and practices to ensure that attorneys can provide effective counsel and respondents' constitutional rights are preserved.

To ensure as safe as an environment as possible, immigration court hearings in the Aurora facility have been increasingly held by telephone, unavoidably affecting the due process rights of respondents. Additionally, due to current courtroom rules and practices, counsels' ability to provide a strong defense for these complex, adversarial trials over the phone is greatly diminished.

For example, the Aurora Immigration Court has a standing order relating to telephonic appearances of counsel that states: "Any party appearing telephonically waives the right to object to admissibility of any document offered in Court on the sole basis that they are unable to examine the document." Therefore, when the Office of Chief Counsel (OCC) trial attorneys attempt to file evidence during the hearing or impeach a witness, counsel is unable to review the documents if not previously provided to counsel. Additionally, due to the nature of the hearing, respondents are unable to confidentially consult with their counsel, thereby impeding attorney-client privilege and greatly limiting counsel and respondents' ability to present a strong defense.

To ensure that attorneys are not forced to choose between limiting due process of their clients and putting them and their loved one's safety at risk by attending hearings in-person, we urge you to implement the following common-sense changes inside the courtroom to address the concerns noted above:

- Permit respondents to request a brief recess to consult with an attorney via telephone through the phone in the attorney visitation room;
- Require that any documents presented in the courtroom for filing or impeachment purposes be scanned and emailed to counsel either in advance or during a recess to permit counsel to review the documents and offer objections;
- Encourage judges to address issues arising in the courtroom that the attorney cannot witness when appearing via phone and encourage judges to describe what is happening in the courtroom for the record, such as who is present in the courtroom, if the client is in emotional distress, or if the client appears ill;

- Provide PPE to all court visitors, including attorneys, witnesses, family members, clergy, and law enforcement so that individuals participating in-person feel safe; and
- Ensure that attorneys have timely access to court documents which their clients are legally entitled to access by scanning and emailing copies of immigration court files to counsel or consider expanding the use of the e-filing system to cover all cases before the immigration court.

Additionally, we urge you to modify any procedures for bringing in respondents into the courtroom to comply with CDC guidelines, to reduce the risk that detained individuals will contract COVID-19. By virtue of close quarters, people in detention are at much greater risk of contracting and spreading this virus. Moreover, due to the lack of physical space for entering and leaving the courtroom, we urge you to work with GEO to make the following changes:

- Take immediate steps to comply with CDC guidelines on COVID-19 prevention in and around the courtroom;
- Avoid mixing people from different dormitories in the court holding cell, hallway, and courtrooms, and create as much physical distance between people attending court as possible. To achieve this goal, consider solutions such as docketing court hearings by dormitory, as well as consider assigning specific judges to specific pods and scheduling specific pods at set times during the week;
- Agree to pull one respondent at a time from the holding cell to ensure social distancing in the hallways and courtroom, if not already taking place;
- Sanitize the respondent's table, chair, and microphone between each hearing; and
- Provide PPE to GEO court officers, EOIR staff, and detained people when attending court.

Finally, we also request that you work with GEO to make the following changes inside the Aurora Detention Center so that individuals in detention have better access to their counsel and can better participate in his or her defense:

- Due to phone availability, "count," and meal services, telephonic legal visits must often be short. Therefore, we urge ICE to work with GEO to set up a system by which attorneys can schedule telephonic legal visits in advance; bring detainees to the attorney visitation area for legal calls; and install phone lines in each attorney visitation room. Alternatively, create confidential space in each dormitory where detainees can speak to attorneys and permit individuals to continue legal calls during "count" or mealtime, and resolve issues related to poor connections on dormitory phones.
- Due to the lack of video conferencing capabilities at GEO, we urge ICE to work with GEO to expand availability of video conferencing; implement a streamlined system to facilitate free and unrecorded legal visits; assure that detained individuals can attend videoconferences in confidential spaces; and conduct staff-wide training among GEO officers and employees.

Please confirm that each of the common-sense measures outlined above is being implemented, and if not, please explain why. We look forward to your prompt attention to this matter.

Sincerely,



Joe Neguse
Member of Congress



Michael F. Bennet
United States Senator



Ed Perlmutter
Member of Congress



Jason Crow
Member of Congress



Diana DeGette
Member of Congress