

**Hon. Carrie C. Johnson-Papillo**  
**Assistant Chief Immigration Judge**  
**New York City Immigration Court - 26 Federal Plaza**

**Hon. Philip J. Montante, Jr.**  
**Assistant Chief Immigration Judge**  
**Buffalo & Batavia Immigration Courts**

**Hon. H. Kevin Mart**  
**Assistant Chief Immigration Judge**  
**New York City Immigration Court - Broadway & Varick Street**

**By Electronic Mail**

**March 26, 2020**

**Dear Judges Johnson-Papillo, Mart, and Montante:**

On behalf of the Immigrant Advocates Response Collaborative, a collaborative of over 80 non-profit immigration legal service organizations, bar associations, and professional associations, we write as a community of concerned legal representatives regarding the insufficient protections adopted by the Executive Office for Immigration Review (EOIR) in light of the current COVID19 pandemic. We, along with other stakeholders across the country, have spent weeks asking for consistent policies and guidance that are in line with recommendations by public health officials working on curbing the spread of the disease. Despite our efforts, the operational decisions currently in place fall far short of what is needed to protect all communities who come in contact with our immigration courts and to maintain due process of law. In fact, in the last 72 hours, two of the immigration courts in the New York City area have been forced to close due to positive tests among EOIR staff, and detainees at three facilities have tested positive. Alarming, all three facilities had recently transferred detainees to the Buffalo Federal Detention Center, where courts remain open.

By contrast, state and federal courts have taken proactive measures to protect all individuals who have business among the courts and to curb the spread of the disease. For example, state courts have cancelled all non-essential hearings but remain accessible for those who have urgent matters requiring adjudication. Crucially, arraignments in state courts, which in part serve similar functions to immigration bond hearings, are taking place every day but with judges and attorneys on both sides appearing remotely. Non-essential filings are no longer permitted, and essential filings may be done electronically. Federal courts in New York have postponed jury trials and left decisions regarding whether to extend deadlines up to the presiding judge on any given case.

The lack of protective measures adopted by EOIR in New York, the epicenter of the United States' COVID19 outbreak, is particularly troubling as the immigration system is a breeding ground for the spread of this highly contagious disease.

Requiring respondents, respondents' counsel, ICE counsel and immigration judges to prepare for and go forward with non-emergency immigration court proceedings at this time is endangering the health of thousands of New Yorkers and is in direct contradiction with the orders in place in the State of New York as well as the advice of numerous public health experts around the state, country, and world. Consequently, we request that you immediately rescind the recently-entered standing orders in your respective courts and issue new standing orders to include the following policies, which are critical to safeguard the health of all who work in the immigration court system and to preserve due process of law for both represented and *pro se* litigants:

### **All Courts**

- Create clear and accessible methods of relaying information to the public, including Respondents, legal representatives, and *pro se* Respondents in a timely manner.
- The New York immigration courts should activate their electronic filing system to accept emergency filings.
- Extend or toll filing deadlines, as appropriate, for a minimum of six (6) months after the courts reopen to give all sides time to re-engage and address any procedural issues that arose as a result of court closures.
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- Encourage judges to grant exceptional circumstances exceptions for anyone who was unable to comply with the one year filing deadline for asylum as per 8 C.F.R. § 208.4(a)(5) because of circumstances directly due to the COVID19 pandemic.
- Encourage judges to generously exercise their authority to sua sponte reopen proceedings or grant exceptional circumstance exceptions for motions to reconsider and motions to reopen filed pursuant to 8 C.F.R. § 1003.23(b).

### **Detained Courts**

- Allow telephonic appearances without filing a motion in advance, and appearances via video conference when requested by Respondent or Respondent's attorney, for all parties for all hearings that do go forward, until public health officials determine that it is once again safe to congregate in large groups.

- A point of contact should be designated within each court to be on hand to allow attorneys to provide the phone number at which they may be reached, as it may differ from the number provided on the E-28, and help troubleshoot issues with telephonic appearances such as connection problems or missed calls.
- Immediately implement a process to accept submissions by electronic mail to last for the length of the pandemic. The order should specify what email addresses must be used and what will be considered as sufficient proof of service on opposing counsel. The order should provide a designated court administrator whom counsel may contact for the purpose of obtaining clarity on emergency motions related to the public health crisis.
- Commit to adjudicating bond hearings scheduled during the pandemic, relying on electronic submissions when necessary, so as to not unnecessarily prolong the detention of individuals in custody. Bond redeterminations should only be adjudicated on the papers if requested by a Respondent.
- Adopt a policy of liberally granting motions for continuance for any type of hearing when requested by Respondent or Respondent's Counsel for the length of the pandemic.
- For the Varick Street Court, allow attorneys that are part of the New York Immigrant Family Unity Project to participate by telephone in all master calendar hearings, custody determination hearings, and initial master calendar hearings for the purposes of identifying unrepresented Respondents who may qualify for legal assistance.
- For the Buffalo and Batavia Courts, suspend all individual hearings until the pandemic has ended and public health officials determine that it is once again safe to congregate in large groups.
- Allow Respondents on the detained dockets (including juvenile and adults) to request, and be granted, voluntary departure via written motion.

### **Non-Detained Courts**

- Create a mechanism for Respondents and their counsel to have access to the courts for emergency filings and emergency hearings. Ensure that these emergency filings are decided on a timely basis.
- Encourage parties with cases that are scheduled during the time of the courts' closures to stipulate to relief in writing and create a mechanism for a judge to issue a final order consistent with the terms of the stipulation.

We thank you for your time and attention to this matter and look forward to your prompt response. For any further questions or concerns, please do not hesitate to contact Camille Mackler at [cmackler@nyic.org](mailto:cmackler@nyic.org).

Respectfully submitted,

The Immigrant Advocates Response Collaborative

Cc: Wen-Ting Chen, Chief Counsel, New York City  
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