



March 16, 2020

Commissioner Bitta Mostofi
Mayor's Office of Immigrant Affairs
New York, New York

Dear Commissioner Mostofi,

As Local Representative for the Varick Immigration Court and Eastern Region Vice President for the National Association of Immigration Judges (NAIJ), I am writing to make you aware of an emerging crisis within the New York City Immigration Courts.

As you know, our nation is currently in the throes of a historic global pandemic. Yesterday, the National Association of Immigration Judges (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's (DOJ) current response to the COVID-19 pandemic and its spread is insufficient and not premised on transparent scientific information. The DOJ is failing to meet its obligations to ensure a safe and healthy environment within our Immigration Courts. No doubt, 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.

At this time, the Department of Justice has not taken the proposed action, and the Immigration Courts have been ordered to function nearly unabated, save for the elimination of master calendar hearings in non-detained settings. We are concerned for a host of reasons related to the health and safety of our judges, court staff, and the parties that participate in these hearings since

every hour we learn of more individuals who have contracted COVID-19 symptoms and who either are currently or have been very recently at the Immigration Court. This morning, we learned that multiple attorneys with the New York Immigrant Family Unit Project (NYIFUP) are now reporting that they are symptomatic. In addition, earlier today, we received cryptic information about an individual working for a government agency on the 18th floor of 290 Broadway, who had experienced a fever that the individual thought was evidence that s/he had contracted the virus, but that the symptom had since cleared, and, in an abundance of caution the General Services Administration had taken steps to clean specific areas of that building. What is of real concern is that we simply don't know who has contracted this virus since carriers can be asymptomatic for long periods. 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 New York, and the Office of our own New York City Mayor, Bill De Blasio.

Beyond the grave risks to the health and safety of all the parties involved, we are very concerned about the infringement of the due process rights of the Respondents who must appear at these proceedings, or who risk being ordered removed and their rights to Constitutional due process infringed upon.

Yet, the Respondents and all of the Immigration Judges and Court personnel are under a New York State and New York City mandatory directive to limit all non-essential movement within New York, while at the same time, they are being ordered by the Department of Justice to continue with hearings. There is a skeletal staff in place to make sure that these hearings can even go forward in a fair manner as a fully functioning court process requires an entire Immigration Judge team to be in place including an Immigration Judge, Legal Assistants, Judicial Law Clerks, Interpreters, Security Staff, and a host of other behind-the-scenes court personnel that process this work. Failure to ensure that all of these components are in place impacts the ability to afford due process rights to the Respondents and for them to access rights pursuant to Immigration Law. The chain of events is as follows:

- Immigration Judges call out sick and/or request leave;
- Cases cannot move forward and are cancelled;
- A case must have a new hearing date set and a new hearing notice must be generated;
- There are insufficient legal assistants available to send out new hearing notices;
- Respondents and their attorneys do not receive new hearing notices in a timely manner because there are insufficient staff to send out the hearing notices;
- Respondents and their attorneys file motions to continue or to appear telephonically, but the mail goes unopened due to staffing shortages and the fact that there is no e-filing at the New York Courts;

- Judges don't receive a motions to adjourn, and, when the Respondent fails to appear, orders a Respondent removed *In Absentia*;
- Substantive filings don't make their way to the Immigration Judge or the Record of Proceeding and cases that do go forward are compromised;
- Hearings that do go forward limp along with a lack of interpreters, technical issues that go unresolved, social distancing requirements that limit courtroom participation, and a lack of support staff to assist in the conduct of proceedings.

No doubt, there are particularly vulnerable situations that warrant specialized considerations. For example,

- (a) steps should be taken to conduct 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.

However, the absence of reasonable leadership on the part of the DOJ is of grave concern to the NAIJ, and 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, the 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. Mimi Tsankov
New York Varick Immigration Court Local Representative
Eastern Region Vice President