

The Honorable William P. Barr
Attorney General
U.S. Department of Justice

James McHenry
Director
Executive Office for Immigration Review

Matthew T. Albence
Deputy Director and Senior Official
U.S. Immigration and Customs Enforcement

CC: Carrie Johnson-Papillo, Assistant Chief Immigration Judge 26 Federal Plaza
Kevin Mart, Assistant Chief Immigration Judge, Varick Immigration Court
Thomas Decker, Field Office Director DHS/ICE/ERO New York

Submitted via e-mail

March 20th, 2020

Dear Attorney General Barr, Director McHenry and Deputy Director Albence,

As the leadership of the New York City Department of Health and Mental Hygiene and Mayor's Office of Immigrant Affairs, we write to urge the Department of Justice ("DOJ") and its office, the Executive Office for Immigration Review ("EOIR"), as well as the U.S. Department of Homeland Security ("DHS") Immigration and Customs Enforcement ("ICE) Enforcement and Removal Operations ("ERO") to immediately take actions as a part of the nationwide COVID-19 pandemic response.

Our city is in the midst of a national effort to limit the spread of COVID-19 and to ensure that those who become severely ill and in need of health services are able to access them without barriers. We are disseminating critical public health guidance to New Yorkers, including urging all New Yorkers to practice good hand hygiene and to stay home as much as possible. We are actively encouraging New Yorkers to practice social distancing and to avoid unnecessary gatherings and travel.

We support and appreciate the appropriate adjustments that have been taken thus far as a result of this global health crisis. This includes the recent announcement that EOIR will suspend all non-detained hearings and that ERO will suspend all in-person appointments with ERO in New York City (and sub-offices in Central Islip and Newburgh).

However, more needs to be done. At the non-detained courts, judges are continuing to go into the courts to prepare for shutdown and have expressed a need for increased safety protocol as they do. At the detained court, where hearings continue, judges and attorneys

have reported that waiting rooms continue to be filled with people, that there is inconsistent cleaning, and that insufficient measures are being taken to protect all parties.

To minimize further consequences of this ongoing pandemic as much as possible, it is critical that the federal government must be able to ensure that all residents and visitors to our city are able to follow the guidance of public health officials. We have been deeply concerned for the health and safety New York City Immigration Judges and Court personnel, for the immigrant community in New York City and the attorneys and advocates serving them, and for the public at large. We request that DOJ and DHS take further action as a part of our collaborative effort to protect our residents and visitors from further transmission of COVID-19.

We echo the request of the National Association of Immigration Judges (NAJI) and the American Immigration Lawyers Association (AILA) in calling for the complete emergency closure of the nation's immigration courts as articulated in their March 15th letter, "Immigration Judges, Prosecutors and Attorneys Call for the Nationwide Closure of All Immigration Courts: Position on Health and Safety of the Immigration Courts During the COVID-19 pandemic."¹

Furthermore, we firmly believe that such closure must be coupled with due process protections for the over one hundred thousand detained and non-detained respondents in removal proceedings in New York City, as well as public health and safety protections for those detained or at risk of ICE enforcement. For this reason, we strongly support the recommendations set forth by AILA issued on March 16th², which call on DOJ and DHS to acknowledge the severity of this pandemic and take affirmative steps to protect employees, respondents, representatives, and the general public, including:

- Immediately closing ALL immigration courts
- Decreasing the number of those in ICE custody and taking proper care to prevent transmission by releasing those in ICE custody with vulnerabilities, increasing the use of parole authority, and using alternatives to detention
- Holding telephonic hearings for those detained and encouraging stipulations in writing where possible
- Allowing for filing and transmission of documents by mail, e-mail and fax
- Allowing for flexibility in all deadlines, including the one-year filing deadline for asylum, and committing to flexibility in later- adjudication of cases impacted by closure

We also strongly urge ICE-ERO to make alternative plans for accepting bond payments (ordinarily done in-person at 26 Federal Plaza) by instituting alternative methods of payment either by mail, online or telephonically.

¹ <https://www.aila.org/advo-media/aila-correspondence/2020/ijs-prosecutors-and-attorneys-call-for-nationwid>

² <https://www.aila.org/advo-media/aila-correspondence/2020/letter-to-ice-and-eoir-regarding-urgent-covid-19>

This pandemic is a threat to the health and safety of New Yorkers, and the City of New York takes that threat seriously. We ask that EOIR and ERO immediately take measures outlined above which are necessary to ensure due process and public health protections for our immigrant communities and for the public at large.

Sincerely,

A handwritten signature in black ink that reads "Oxiris Barbot, MD". The signature is fluid and cursive, with the letters "Oxiris" and "Barbot" being more prominent than "MD".

Oxiris Barbot, MD
Commissioner
NYC Department of Health & Mental Hygiene

A handwritten signature in black ink that reads "Bitta Mostofi". The signature is stylized and cursive, with the letters "Bitta" and "Mostofi" being more prominent than the rest of the name.

Bitta Mostofi
Commissioner
NYC Mayor's Office of Immigrant and Affairs