

'Is My Life Not As Valuable As Yours?'

Immigration Judges Want All Courts Shut Down As Coronavirus Cases Soar

The Trump administration's hardline immigration policies are intersecting with a highly contagious disease at a time when cities across the country are shutting down.

Federal immigration courts that handle cases of detained immigrants are still open, despite a growing number of states and cities issuing "stay at home" mandates to combat COVID-19. On Sunday night, the organizations representing immigration judges, prosecutors, and defense lawyers jointly demanded—for the second time in a week—that the courts be closed.

Meanwhile, detained immigrants are staging hunger strikes at three New Jersey jails to protest the lack of sanitary conditions they fear could lead to outbreaks. Their protests come after confirmation of positive tests from two staff members connected with two other jails in the state that house immigrants.

The pipeline to feed those jails remains open. Although immigration enforcement officers have scaled back operations, they say they will continue to [focus their enforcement](#) on "public safety risks" and people subject to "mandatory detention on criminal grounds."

"Their recklessness towards immigrant community well-being and immigrant lives is particularly disturbing—and even more dangerous in this moment because a virus doesn't ask you for your legal status before it decides what to do," said Camille Mackler, a New York immigration lawyer

who is a fellow with the Truman National Security Project, a left-leaning think tank for national security issues. "This could get everyone sick."

The Trump administration's hardline immigration policies are intersecting with a highly contagious disease at a time when New York State leads the nation with at least 20,875 confirmed coronavirus cases. In New York on Friday, Attorney General Letitia James joined Bitta Mostofi, New York City's commissioner of Immigrant Affairs, in calling for a shutdown of all immigration courts. They agreed with the judge's union and lawyer organizations in urging for bond to be filed electronically.

The Legal Aid Society and the Bronx Defenders—two New York legal providers—sued in federal court on Friday to have clients who are susceptible to coronavirus released from ICE detention, including those with diabetes, heart disease, neurocognitive disorder, kidney disease, and lung and liver problems.

Officials with ICE said on Monday that there had been no detainees with confirmed cases of coronavirus of individuals in the agency's custody. They said that they were testing detainees according to guidelines from the Centers for Disease Control and Prevention, but would not say how many. In a statement, a spokesperson said: "The health, welfare and safety" of ICE detainees "is one of the agency's highest priorities."

In recent weeks, however, the Trump administration has reacted unevenly, and without clear communication regarding immigration policy and coronavirus—especially within the court system, which is run by the Department of Justice.

The Executive Office of Immigration Review (EOIR), part of the Department of Justice, has shut down only 11 of its 68 courts, and those are for cases where immigrants are not in detention. Those non-detained courts—from Atlanta to Los Angeles to Sacramento—will be closed through April 10. It

took until March 18 for the EOIR to make that decision. But although hearings were closed to the public, personnel must still report to offices to administer paperwork.

“The agency continues to evaluate the dynamic situation nationwide and will make decisions for each location as more information becomes available,” John Martin, a spokesman for EOIR, said Friday.

In New York, only a mile separates the closed courts from an open one on Varick Street for cases involving people who are being detained. Judge Amiena Khan in New York, who spoke as executive vice president of the [National Association of Immigration Judges](#) (NAIJ), said she is gravely concerned for her colleagues presiding over those cases. “We keep hearing from them: ‘Is my life not as valuable as yours?’ ”

On Monday afternoon, the NAIJ [tweeted](#) that an immigration judge at Varick has pneumonia and was tested for COVID-19, awaiting results. That court remains open.

On Friday, the NAIJ tweeted that judges were told in Newark that a prosecutor for ICE tested positive in the now-shuttered Newark court, but were told to keep that “secret.” The tweet demanded: “[All immigration courts must close NOW.](#)” A Denver immigration judge tested positive for COVID-19 last week.

“Across the nation public health experts and government officials are trying to slow the spread of the Coronavirus through social distancing, banning group gatherings, disinfecting surfaces and other means,” Judge Ashley Tabaddor, the president of the NAIJ, said in a joint statement with the American Federation of Government Employees (AFGE) Local 511, representing ICE prosecutors, and the American Immigration Lawyers Association. “But in our Immigration Courts, we’re packing people together in crowded rooms for prolonged periods. Keeping the courts open is not only a health risk to everyone who comes to these courtrooms, it is creating

a serious health hazard for the broader public."

As a growing number of states and municipalities issue "stay at home" orders, keeping only essential businesses running, members of the immigration judges association are even more surprised that courts are staying open. "I don't believe that immigration proceedings and ensuring the deportation of individuals is mission critical at this time," Khan said.

Across the country, staff have been outraged that they have had to continue going to their offices, according to a [ProPublica report](#). On Friday, employees of the Varick Street court were still traveling on mostly empty subways to work.

"We're still hanging in there," Lanette Brown, a legal assistant for Judge Charles Conroy told The Appeal on Friday. She said she was not wearing a mask. "There aren't any."

Some judges at Varick Street have been calling out sick. Andrea Sáenz, the supervising attorney of immigration practice at Brooklyn Defender Services, said she had a client detained for five months at Bergen County Jail who had applied for asylum. His hearing started March 3, but when the judge had to leave early, it was continued to March 17. The judge called out sick on March 17, and the case has not been rescheduled.

That has also happened in cases involving people who are not detained. Sarah Deri Oshiro, managing director of the immigration practice at The Bronx Defenders, brought her client to 26 Federal Plaza for an individual hearing to have his green card reinstated on March 12. If they didn't show, she would have had to forfeit the case. Her client brought four family members, including a 74-year-old grandmother on public transportation, only to sit for 90 minutes in a crowded waiting room before realizing the judge had called out sick.

"It just signals that this president does not care if immigrants or community members or people who advocate for them get sick and die," said Deri Oshiro, whose organization provides pro bono counsel to detained immigrants. "And, frankly, they don't even care about the immigration judges."

For people being detained while awaiting their hearings, conditions inside the jails are "abhorrent," Deri Oshiro said. Family Unity Project lawyers say their clients tell them that they have little soap or toilet paper and can only shower at specific times. They cannot wash their hands frequently.

Fears of infection increased last week after the Bergen County sheriff reported on Wednesday that a corrections officer at the county jail had tested positive for the virus. In addition, a staff member tested positive at the Elizabeth detention center, which is privately run. That person was a member of the medical administrative staff who did not routinely interact with detainees, an ICE official said.

According to its [web page](#) on COVID-19, ICE isolates new detainees who have a fever and respiratory symptoms. They monitor others who may meet other risk conditions. They will place detainees with these conditions in a medical airborne infection isolation room.

Those protocols inspire little confidence among attorneys whose clients are being detained. "I feel like the jails really don't want to say if a detainee is positive," Sáenz said.

Added Deri Oshiro: "Every day when new people enter ICE custody, we get clients who call us panicking and scared that more people are coming into jails."