



March 24, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224
Via email: governor.ny.gov

Hon. Letitia James
Attorney General of the State of New York
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Dear Governor Cuomo,

I am writing to you with urgency, in my capacity as Executive Vice President of the National Association of Immigration Judges (NAIJ). NAIJ asks you to intervene to close the immigration courts in New York State. We face challenging times during this unprecedented global pandemic. I thank you for your leadership as Governor of the State of New York and for your courage in ensuring that all are protected in our communities.

The urgency of our request cannot be overstated. Our request is about protecting lives - not business as usual. Closing all immigration courts immediately will ensure the safety, health and well being of all court personnel, their families and the greater community.

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) (collectively, "the Organizations") have asked that the Department of Justice (DOJ) and the Executive Office for Immigration Review (EOIR) close all immigration courts nationwide for the protection of all court personnel and the broader community. Please find attached our joint letters to EOIR.

Despite our efforts, and the clear directives of federal, state, and local public health officials, several of the immigration courts in New York remain open, placing the lives of New Yorkers at risk, including court employees, attorneys, witnesses, and the non-citizens who appear before us. **NAIJ requests that you act immediately and issue a statement in support of closing the remaining courts in New York: the Varick Immigration Court in New York City, Buffalo Immigration Court, Batavia Immigration Court, Fishkill Immigration Court and Ulster Immigration Court.** Closing these courts will help to diminish further spread of the COVID-19 virus and lessen the possible impact on New York State, city and county health resources.

NAIJ applauds the closing of two of our immigration courts in NYC located at 26 Federal Plaza and 290 Broadway and the adjournment of all non-detained proceedings. Shockingly EOIR has kept open all detained and hybrid courts in New York State. Yesterday we learned that a court employee at the Varick Court tested positive for the COVID virus. Additionally one of our Immigration Judges at the same court has fallen ill, diagnosed with pneumonia and is awaiting the COVID test results. We also learned today that a Legal Aid attorney who regularly appeared before the Court at Varick Street was diagnosed with the COVID virus. It was only with great pressure from NAIJ that EOIR at the eleventh hour last night, decided to close the Varick Court due to this exposure. Incredibly, we are hearing that the Agency plans to reopen the Varick Court tomorrow.

Today NAIJ learned that EOIR is reopening the immigration court at 290 Broadway to allow for filings. EOIR is having staff continue to travel to the non detained courts in New York City for the processing of mail and answering telephone calls. EOIR is reopening the Varick Immigration Court after a one day closure due to exposure from an employee with a confirmed COVID diagnosis. EOIR is advising Varick personnel that if they think they were not in contact with the identified individual that they should report to work. EOIR's incomprehensible decisions to continue operations at these courts is putting all those involved and the greater community in harm's way.

Continuing operations at these courts is not based on current public health guidance and scientific advice. Every link in the chain that brings individuals to the court, from the use of public transportation, to security lines, crowded elevators, cramped cubicle spaces of court staff, inadequate waiting room facilities in the courthouses, and inadequate disinfectant supplies and personal protective equipment at the courts places lives at risk. It is irresponsible to continue operations at the remaining open courts in New York State.

We also write to share the unique situation of the judges and staff who participate in the Institutional Hearing Program (IHP) at the Downstate Correctional Facility and the Ulster Correctional Facility. These EOIR judges and staff are housed within these state correctional facilities and thus work on state property, adjudicating the immigration proceedings of state inmates. These inmates cannot be removed from the U.S. until after the conclusion of their state sentence, often months or years in the future. These courts are also open despite the fact that three employees at the Downstate Correctional Facility have tested positive for the COVID

virus. In addition, we just learned that there is a confirmed case of COVID at Ulster. We have no doubt that incidences of the virus will only continue to grow at these facilities, because inmates from other facilities with even more cases of the virus are routinely transferred to Downstate and Ulster. As you are well aware, prisons are at great risk for community spread of the virus. In the midst of this pandemic, it makes little sense to keep the immigration courts open in these facilities.

NAIJ fully supports the need to pause operations to assist in slowing the spread of this virus and the rate of new infections in the community so as not to overwhelm our health services. We have repeatedly asked EOIR and DOJ to take into consideration State, City and County public health directives in their decision making. Despite our pleas, EOIR and DOJ have continued to take the position that Immigration court functions are exempt from State and City decrees that only essential business will be functioning with workers commuting to and from the job. Non-detained immigration proceedings cannot be deemed essential business during this pandemic.

For detained individuals, NAIJ recognizes that liberty and due process interests are paramount, but we also recognize that we are in the throes of a historic, unprecedented health crisis. Keeping our courts open endangers all those involved in the process - their families, and the greater community. Until a few days ago, EOIR was flying interpreters from Miami and Georgia to New York and then back to their own communities.

Recognizing the needs of the very vulnerable population that we serve, including detained individuals and unaccompanied juveniles, NAIJ has offered EOIR alternative solutions such as telework and telephonic bond hearings if necessary. We have asked EOIR to include these alternatives in their continuity of operations plans (COOP). Our partners in support, the Organizations have offered alternatives to detention for this vulnerable population such as discretionary detention and increased consideration for parole.

To continue EOIR operations as business as usual - is dangerous and places all that participate in the process of having to decide between - keeping their jobs and supporting their families and risk self harm and harm to their loved ones. Moreover the attorneys and witnesses are motivated to come to court, in spite of the danger to their lives for fear of, in the alternative, getting in absentia orders of removal. This is unjust, not aligned with our American judicial principals and not becoming of our Nation and State.

To be clear, all of the Immigration Judges and Court personnel at the courts referenced herein are under a mandatory directive by the State of New York to Stay at Home to minimize the risk and spread of COVID-19, *while at the same time are being ordered by the Department of Justice to continue reporting to work.* Immigration Judges, Legal Assistants, Judicial Law Clerks, Security Staff, and a host of other behind-the-scenes personnel that work at the New York detained and detained/mixed Courts are all placed at great risk and profoundly affected by DOJ's failure to take responsible action based on the available scientific evidence and close

the immigration courts.

NAIJ asks that you, as Governor of the State of New York, intervene to call for the closure of all immigration courts, detained and non detained in New York State to protect the residents of the State of New York who are callously being placed in harm's way. No one at this time of health crisis should be placed in this position!

I look forward to hearing from you and your office at your earliest convenience.

Sincerely,

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DISCLAIMER: The author is the Executive Vice President of the National Association of Immigration Judges. The views expressed here do not necessarily represent the official position of the United States Department of Justice, the Attorney General, or the Executive Office for Immigration Review. The views represent the author's personal opinions, which were formed after extensive consultation with the membership of NAIJ.