

Hon. Khalilah Taylor
Assistant Chief Immigration Judge
New York City Immigration Court - Broadway & 26 Federal Plaza

Hon. Jose Sanchez
Acting Assistant Chief Immigration Judge
Buffalo & Batavia Immigration Courts

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

By Electronic Mail

June 11, 2020

Dear Judges Taylor, Mart, and Sanchez:

On behalf of the undersigned organizations, the Immigrant Advocates Response Collaborative (I-ARC) is submitting this letter to detail concerns related to the re-opening of the New York Immigration Courts as restrictions ease in the wake of the COVID-19 pandemic. **We respectfully request a telephonic or video conference no later than June 19, 2020 to discuss these matters further.**

We, along with other stakeholders across the country, have spent months 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 made fell short of what was needed to protect all communities who come in contact with our immigration courts and to maintain due process of law.

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 initially cancelled all non-essential hearings but remained accessible for those who had urgent matters requiring adjudication. Federal courts in New York postponed jury trials and left decisions regarding whether to extend deadlines up to the presiding judge on any given case. In addition, most statute of limitations and deadlines in state courts were extended by executive order.

The Executive Office for Immigration Review (EOIR), however, has operated in a near-opaque manner, making last-minute decisions to extend cancellations of hearings that were noted only to a section of individuals with legal representation and excluding pro se respondents entirely. In the absence of direction by EOIR, legal representatives have been forced to prepare their clients and witnesses for Individual Hearings and attempt to comply with pre-pandemic filing

deadlines while working under the restrictions of stay-at home orders meant to curb the spread of the pandemic in the nation's worst-impacted state. At the same time, providers must contend with their own considerations when trying to decide how to reopen their physical office spaces, including how to keep staff and clients safe, particularly those who care for health-compromised individuals or who are health-compromised themselves and those who have children or other household members to care for while schools remain closed and other care providers are unavailable.

To preserve due process and to ensure the impartial treatment of all parties, New York's legal service providers urge you to adopt the following measures as you consider how to re-open your courtrooms.

Court Policies:

Hearing Schedules

- Commit to not holding any non-detained hearings until New York State fully emerges from its State of PAUSE.
- Automatically adjourn all non-detained master calendar hearings for 45 days beyond re-opening. Allow for motions to schedule individual conferences for cases where a Master Calendar Hearing may be necessary or in the interest of all parties.
 - During that time, the court will inform all respondents who are scheduled to appear in the future that master calendar hearings will be conducted telephonically unless a party requests to appear in person, and will provide a method by which individuals can update their telephone numbers with the court
- Commit to providing a minimum of 28 days of notice before resuming all hearings of any posture so that attorneys can reasonably rely on information provided to prioritize their caseloads.
- Adopt a policy of automatically granting all motions to reset individual hearings to master calendar hearings when parties note a need to discuss the current posture of the case before proceeding with an individual hearing. Such policy should be in effect until 45 days after the expiration of the New York on PAUSE executive order.
- Institute a system for legal representatives to communicate to the Court which cases that were cancelled during the shutdown are ready to move forward and should be prioritized for rescheduling.

Filings & Motions

- Allow parties to file evidence, briefs, and submissions at least 6 months from reopening, even if a filing deadline in the case had passed during the time period that the PAUSE act required people to stay at home for non-essential business.
- Instruct immigration judges to enter final resolutions for cases where both parties stipulate to the procedural posture, e.g. for a Special Immigrant Juvenile Status with a current priority date and ability to immediately adjust their status before US Citizenship and Immigration Services.

- Develop permanent electronic filing systems, similar to other state and federal court systems that do not rely on email and that do allow for confirmation that the submission was successfully made.
- Promptly rule on motions to continue, to extend filing deadlines, to appear by telephone/video, and to waive the respondents' appearance.

Remote Appearances

- Instruct immigration judges to generously grant motions to continue or for telephonic/video testimony where the representative raises health or safety concerns on behalf of themselves or their client.
 - Allow those who choose to appear in person to do so at all scheduled hearings.
 - In order to reduce the amount of individuals being present in Immigration Court, generously allow for experts and witnesses wishing to appear telephonically.
 - Remove the requirement from the standing orders that all parties and witnesses must be physically present in the same room as legal counsel to allow for testimony and allow parties to make the best judgment based on individual health concerns as to whether they should gather for the testimony or testify from separate locations.
- Make public what technology is needed to appear by video. Commit to treating all parties equally by extending the opportunity to appear by video equally to respondents, their counsel and witnesses, as well as to ICE and their witnesses.
- Commit that where respondents (and their counsel) appear by telephone or video, EOIR will not require them to waive any rights, such as the right to submit evidence or to inspect evidence/filings that ICE submits at the hearing.

Communications

- Recognize that prior to this pandemic, EOIR did not use their online portal or social media to make announcements, nor does the Immigration Court Practice Manual allow for notices to be provided in those formats, and thus alerts posted to those portals should not be binding. It is not fair to expect all who have matters before EOIR to be aware of, and able to comply with, notices suddenly posted on these platforms.
- Make announcements about closures, reopening, and filings in several languages, not just English. At a minimum, announcements should be made in English, Spanish, and the other top ten languages served by the Court in the last 12 months.
- Suspend in absentia orders for at least 6 months from reopening, given the confusion caused by the courts' announcements, the lack of meaningful notice to the public, and consistent failures noted by attorneys of judges to rule on motions for continuances.
- Implement a broad communications campaign to ensure that all respondents are aware of the policies outlined above.
 - Include procedures to allow for inquiries from pro se respondents, in multiple languages, as detailed above.

- Adopt policies that allow the court to quickly and efficiently communicate changes in court status to all, including pro se respondents, when a court employee tests positive for COVID-19.

In Person Safety Precautions

- Hire a public health safety consultant to create an evaluation of each Immigration Court in New York City, including what measures would be necessary to comply with Centers for Disease Control standards for social distancing. Make this evaluation report available to the public within 90 days of reopening the New York City Immigration Courts.
- Commit to engaging with stakeholders in determining cleaning and safety precautions necessary to reopening including making proposed plans and procedures available for examination by independent experts identified by stakeholders and including their recommendations in the process.
- Reorganize waiting rooms and hallways to allow for 6 feet of social distancing between individuals, and post adequate signage (in multiple languages, as detailed above) and other markers to remind individuals to comply with 6 feet of distance. Make sure there is adequate distance at all times respondents go to a hearing, including the security lines when entering, taking elevators, and using restrooms.
- Ensure there is adequate distance between all individuals in the courtroom, including adequate distance between all of the following people: ICE counsel, the IJ, the IJ's assistant, respondent's attorney, respondent, the interpreter, a witness, and respondent's co-counsel. Do not require counsel and co-counsel to sit too close together and do not require counsel and respondent to sit too close together.
- Monitor waiting rooms and hallways consistently to ensure compliance with social distancing guidelines, and limit access to waiting rooms and courtrooms beyond the number of individuals who can safely comply with such guidelines.
- Implement cleaning protocols to sanitize courtrooms and waiting rooms between each in-person hearing.
- Limit the large waiting rooms to 12 persons maximum. Limit smaller waiting rooms to 4 person maximums.
- Adjourn hearings on days when safe social distancing is not possible given the volume of individuals present in the building and/or hallways and waiting rooms. These reschedules should not be charged to the Respondent in terms of impact on the clock or any other processes.
- Provide Personal Protective Equipment (PPE), including masks and gloves, for all parties including respondents, and install hand sanitizing stations in courtrooms, hallways, and waiting rooms. Additionally, install air purification or new filtration systems in all courtrooms. Examine the use of plexiglass partitions in other courtrooms around the state and adopt similar strategies based on best practices learned.
- Waive the presence of all minor respondents at master calendar hearings.

- Provide interpreters at entry points to the office building to communicate information to applicants about building safety procedures and ensure that any health screenings are accurate and complete.
- Provide a method for the public and the media to observe immigration court hearings.

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@immigrantarc.org

Respectfully submitted,

The Immigrant Advocates Response Collaborative
 African Services Committee
 American Immigration Lawyers Association - New York Chapter
 Brooklyn Defender Services
 CAMBA Legal Services
 CARECEN NY
 Catholic Migration Services
 Center for Family Representation
 Central American Legal Assistance
 Community Legal Advocates of New York
 Community Resource Center
 Cornell Law School
 Deportation Defense Clinic at Hofstra Law School
 Erie County Bar Association Volunteer Lawyers Project, Inc.
 Her Justice
 Immigrant & Refugee Services, Catholic Charities Community Services, Archdiocese of New York
 Immigrant and Non-Citizen Rights Clinic, CUNY School of Law
 Immigrant Justice Corps
 Legal Services NYC
 Lutheran Social Services of New York
 Mobilization for Justice
 Neighbors Link Community Law Practice
 New York Law School Asylum Clinic
 New York Lawyers for the Public Interest
 New York Legal Assistance Group
 Safe Harbor Project, Brooklyn Law School
 Safe Horizon
 Safe Passage Project
 TakeRoot Justice
 The Door's Legal Services Center
 The Legal Aid Society

The Legal Project
The Volunteer Lawyers Project of Onondaga County
UnLocal
Urban Justice Center Domestic Violence Project

Cc: Wen-Ting Chen, Chief Counsel, Immigration and Customs Enforcement, New York City
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