



September 30, 2020

The Honorable John Cornyn
Chairman, Subcommittee on Border Security and Immigration
Senate Judiciary Committee
U.S. Senate
Washington, D.C. 20510

The Honorable Dick Durban
Ranking Member, Subcommittee on Border Security and Immigration
Senate Judiciary Committee
U.S. Senate
Washington, D.C. 20510

RE: The National Association of Immigration Judges Calls for Immediate Closure of
the York Immigration Court due to Serious Health and Safety Concerns

Dear Chairman Cornyn and Ranking Member Durban,

The National Association of Immigration Judges is asking your assistance to facilitate the immediate closure of the York Immigration Court because of a widespread COVID-19 outbreak at the York County Prison, which has rendered the court unsafe. A coronavirus outbreak has resulted in a quarantine of a large portion of the facility, and the Executive Office for Immigration Review (EOIR), which runs the York Immigration Court, has refused to provide adequate information or safety procedures to protect the health and safety of judges, court staff, and all stakeholders that participate in and support hearings at the facility despite our repeated requests.

By way of background, the York Immigration Court is located inside of the York County Prison. The prison has a maximum of 2,400 inmate beds. There are York County criminal and immigration detainees at the Prison. The Immigration Court has a separate entrance for staff members. There are three courtrooms. Each courtroom has a separate entrance for court staff, attorneys/witnesses and detainees. There is a York County Officer (YCO) who is assigned to each courtroom. The YCO transports the detainees to and from immigration court and generally remains in the courtroom during the hearing.

As of September 30, 2020, there are currently 93 pending York County Prison immigration cases before the York Immigration Court. In addition to hearing York cases, the immigration judges also conduct hearings via televideo from several detention facilities around Pennsylvania – including Cambria County, Clinton County, Pike County, Berks County Residential Center, Abraxas Juvenile Detention Center, various Pennsylvania State Correctional Institutions, Allenwood Correctional Institution and Moshannon Federal Correctional Center.

The York Immigration Court staff includes: 3 sitting Immigration Judges, a Court Administrator, seven Legal Assistants and an Attorney Advisor. Currently, several of the Legal Assistants are working on a rotational schedule, while some, as well as the Attorney Advisor, have been working remotely from their homes.

Prior to the pandemic, the individuals in court would generally include: the respondent (if detained at the York County Prison), counsel for the Department of Homeland Security (DHS), the interpreter, the Immigration Judge, the Legal Assistant, the YCO, and if represented, the private counsel for the respondent.

In late May, through the assistance of the current Assistant Chief Immigration Judge (ACIJ), the Immigration Judges began conducting court hearings through Jabber and Open Voice in their chambers. The respondents appear via televideo from the courtrooms, while the attorneys, the interpreter and witnesses participate in the hearing through Open Voice.

Many detainees who appear before the York Immigration Court are unrepresented. Thus, although the York Immigration Court participates in the EOIR Courts & Appeals System (ECAS), there continues to be an exchange of papers. If an unrepresented individual submits papers to the Court, the Court accepts the papers. The papers will usually be handed to the YCO who will then hand the documents to the EOIR court staff. The EOIR court staff will accept the documents and scan them into the ECAS system. The EOIR court staff may then touch others papers, files, or areas that other staff members may touch or encounter. Thus, there is a concern regarding inadvertent spread of the coronavirus. York Immigration Court staff members have continued to have contact with the YCOs during the pandemic.

Currently, there is a weekly cleaning service at the York Immigration Court. The cleaning company began providing services in May 2020. The current cleaning service cleans once a week, every Thursday for approximately 30 minutes. They clean the immigration court office space and the courtrooms. It is believed that they do not disinfect desktops or common spaces. The cleaning service included “fogging” service once a month, but that service ended a couple of months ago. However, the staff was informed that a fogging was conducted yesterday, September 29.

On Monday, August 31, 2020, the York Immigration Court was informed that there were 26 COVID-19 positive cases at the York County Prison. On Tuesday, September 1, 2020, the immigration court was informed that the numbers had risen to 46 cases, which included two YCOs. On Thursday, September 3, 2020, the immigration court was informed that the numbers

had skyrocketed to 169 cases. On September 21, 2020, the court was informed there were approximately 320 cases. The court has not received further updates on the number of cases.

Given the Court's shared space with the prison and the shared ventilation system, the sudden rise in the number of COVID-19 positive cases is extremely alarming. The staff has received conflicting information regarding COVID-19 positive cases. Thus, there is a genuine concern that immigration court staff (including judges) is not receiving all up to date information.

Of particular note, one of the immigration judges was informed that one of the detainees who was in the courtroom on August 25, 2020 subsequently tested positive for COVID-19 on the following day. This detainee was in the court for an extended period of time with the YCO. Since the confirmation regarding the COVID-19 positive case in the courtroom, there has been no deep cleaning conducted of the courtroom. Subsequent hearings have been conducted via televideo from that courtroom with no deep cleaning to ensure the safety of the respondents or YCOs who entered and occupied that court space for an extended period of time.

Since the announcement of the rising number of positive COVID-19 cases, the immigration court staff has heard of no efforts to conduct a deep cleaning of the office space or courtrooms.

There is televideo capability from within the prison. It has been utilized during other illnesses, such as chicken pox, mumps, and measles outbreaks. However, there has been no effort to utilize it during the COVID-19 pandemic.

Given the recent and serious outbreak of COVID-19 at the prison, the prison has quarantined a large portion of the facility. Thus, many of the detainees are unable to be transported to the court. The Court is generally not informed of the cohorted individuals until shortly before the scheduled hearings. When the majority of scheduled hearings are unable to proceed because of the need to quarantine a large number of individuals, NAIJ believes that EOIR's unabated scheduling of cases without regard to the current COVID-19 outbreak is problematic.

Given the recent outbreak of COVID-19 at the prison, NAIJ recommends the following:

- (1) The York Immigration courtrooms and offices should be immediately deep cleaned, i.e., cleaned sufficiently so that every effort is made to eliminate the coronavirus from the entire EOIR space;
- (2) The York Immigration courtrooms and offices should be cleaned at least twice/day during the course of the pandemic, i.e., cleaned sufficiently so that coronavirus is eliminated from the entire EOIR space;
- (3) The York Immigration Court HVAC system should be inspected by GSA or Space & Facilities, and a copy of the report should be given to NAIJ;
- (4) If the HVAC system uses non-HEPA or below MERV13 filters then the Agency should upgrade/retrofit the HVAC system to comply with the recommended standards described by ASHRAE (<https://www.ashrae.org/technical-resources/resources>); and
- (5) If the HVAC system cannot be retrofitted to meet ASHRAE standards then the Agency should provide two personal HEPA air purifiers to each immigration court judge for their respective offices and courtrooms.

While the aforementioned issues are addressed by the Agency and until the COVID-19 outbreak in the prison stabilizes, NAIJ supports a temporary closure of the York Immigration Court.

We welcome your assistance and support in achieving these objectives for the safety of the York Immigration Judges, stakeholders and the greater Pennsylvania community. We are available to speak with you at any time, and are available to answer any follow-up questions that you may have.

Sincerely,

Ashley Tabaddor

Ashley Tabaddor
President, National Association of Immigration Judge

cc: Senator Patrick J. Toomey, Pennsylvania
Senator Robert P. Casey, Pennsylvania