



NEW JERSEY STATE BAR ASSOCIATION

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VIA EMAIL ONLY

Hon. Phil Murphy
Governor
State of New Jersey
Office of the Governor
P.O. Box 001
Trenton, NJ 08625

Re: The Closure of the Newark and Elizabeth Immigration Courts

Dear Governor Murphy,

The New Jersey State Bar Association (NJSBA) is requesting that the Newark and Elizabeth Immigration Courts be closed immediately, in the interest of the health and safety of the residents of NJ and the country. In support of this request, the NJSBA asks you to consider the following:

NEWARK IMMIGRATION COURT:

On March 6, 2020, the Newark Immigration Court, located on the 12th floor of the Rodino Building, 970 Broad Street, Newark, NJ, was temporarily closed for the afternoon because an attorney who had been exposed to COVID-19 and who was experiencing symptoms was present in court.

On March 9, 2020, the Newark Immigration Court reopened, and remained open until March 18, 2020. During that period of time, literally thousands of respondents and their family members were required to appear at master calendar and individual hearings, along with their attorneys, attorneys from the Office of Chief Counsel, Court staff, interpreters, security guards and Immigration Judges.

It was later learned that a second private attorney and an interpreter have tested positive for COVID-19 after being in court on March 11, 2020. The attorney is quite ill. **Approximately 70 other cases were heard that morning before the same Immigration Judge, who is currently under self-quarantine.** That is only a fraction of the people who were present at court that day. Because of the volume of individuals who must appear at the Newark Immigration Court on any given day, the majority of individuals must wait together, sometimes for hours, in an extremely small waiting room, in which all attorneys, courts staff, interpreters, security guards and judges must also pass.

It was also learned that an attorney from the DHS Office of Chief Counsel, who was present in Court on March 13, has not only tested positive for COVID-19 but is currently in a **medically induced coma in ICU fighting for his life**. The entire staff of the Office of Chief Counsel, which is primarily located on the 13th Floor of the Rodino Building, has been placed under required quarantine for a period of two weeks.

As a result of this, the US Department of Justice, Executive Office for Immigration Review (EOIR) issued a directive on Twitter and Facebook stating that the Newark Immigration Court would be closed from March 18-April 10, 2020, and that all court filings would be considered timely filed on April 10, when the court reopened.

Last night, March 25, at 9:30 pm, EOIR announced via Twitter and Facebook that Newark Immigration Court would reopen starting TODAY, March 26. No further information was given to the public, or, notably, the Immigration Judges or the court staff. It has been clarified that the Newark Court has reopened for court filings only, because EOIR has now stated that any filings due during the previous days of closure would now be due on March 30, 2020.

Some members of the court staff are now required to be present to accept in-person filings at the court window, as well as to handle filings that have been mailed to the court. The Office of Chief Counsel remains closed under quarantine, and therefore cannot accept filings.

The reopening of the Newark Immigration Court, even for a limited purpose, is in clear violation of Executive Order 107. The functions of the Court at this time are non-essential, because the Court does not handle detained cases. Moreover, the reopening is putting Court staff in jeopardy of not only exposure to the virus themselves, but also of spreading it to others. The City of Newark is under a shelter-in-place restriction, and, this morning, the U.S District Court for the District of New Jersey just issued an order closing the Martin Luther King and Frank R. Lautenberg courthouses because several employees have confirmed positive COVID-19 tests. The courts are closed immediately and will remain closed through April 6, 2020.

It should be noted that the courthouses are located **next door** to the Rodino building, and the U.S. Attorney's Office is in the Rodino Building. Staff, attorneys, and members of the public use the same parking facilities, elevators, and even cafeterias located in the buildings.

Therefore, for all of the above reasons, the Newark Immigration Court should be closed immediately and remain closed until its scheduled reopening date of April 10, at the earliest.

ELIZABETH IMMIGRATION COURT:

The Elizabeth Immigration Court is located at 625 Evans Street, Elizabeth, NJ, and is located in the same building as, and in close proximity to, ICE detainees. The Elizabeth Court handles detained cases and is currently open.

On March 13, 2020, a medical staff person who works in the detention center was presumed to have been exposed to COVID-19; this diagnosis was later confirmed. Moreover, because attorneys for the Office of Chief Counsel travel back and forth between the Elizabeth Immigration Court and the Detention Center, where there is an auxiliary OCC office, and the Rodino Building in Newark, the OCC in Elizabeth has been included in the mandatory, two-week quarantine. Numerous private and pro bono

attorneys also routinely appear in both courts, as do interpreters and ICE personnel.

One of the Elizabeth Immigration Judges has been out on leave; an Immigration Judge from Newark, whose husband had been quarantined but tested negative for the virus, is now handling the docket in Elizabeth.

Immigration attorneys are allowed to appear telephonically if they choose; court staff, judges, security guards, interpreters, and, of course, the detainees housed in Elizabeth are there in person. The Office of Chief Counsel is still under quarantine; their attorneys have been appearing telephonically.

On March 24, 2020, at 2:30 pm, EOIR announced, via Twitter and Facebook, that the Elizabeth Immigration Court was closing for the rest of the afternoon because they had received confirmation of “the presence of an individual with a test-confirmed Coronavirus diagnosis.”

The Elizabeth Immigration Court reopened the next day and remains open.

The Elizabeth Immigration Court hears cases for individuals who are housed at Elizabeth Detention Center, as well as at Essex and Hudson County Jails. The individuals housed at those jails are usually seen via tele video. However, a detainee and a senior staff person at Essex County Jail both have positive COVID-19 diagnoses and are experiencing serious symptoms. And ICE detainees at all three locations are engaging in hunger strikes because they are afraid of contracting the virus as well.

Moreover, on March 25, EOIR issued a requirement that all attorneys dealing with inmates in ICE detention centers and courts MUST bring their own personal protective equipment (PPE) in order to be allowed to enter the facilities. Therefore, either attorneys cannot adequately represent their clients, or they must obtain PPE at the expense of health care providers and first responders who desperately need this equipment.

The NJSBA recognizes that it is more difficult to close a court that handles detained cases, as that imposes a reduction of the individuals’ constitutional rights. However, the NJSBA believes that a short-term closure of two weeks, in order to ensure that anyone who has been exposed to COVID-19 does not spread the virus, even unwittingly, is extremely important to protect the health and safety of the individuals who are housed there, who work there, and who must report there, as well as the public at large.

The NJSBA would, at the same time, ask that the State confer with ICE regarding the release of any non-criminal or low-risk immigration detainees. This would further aid in slowing the spread of the virus, as well as protecting the individuals who work at the Elizabeth Immigration Court and Detention Center and would minimize significantly the numbers of detained cases on the court docket. Should ICE forbear from placing new detainees in custody within NJ facilities would also stem the spread of the virus to vulnerable inmate populations. Alternatives to detention, such as ankle-bracelets, or mandatory video or telephonic check-ins would help ensure that ICE’s mission is not curtailed.

It should be noted that the National Association of Immigration Judges (NAIJ), the American Immigration Lawyers Association (AILA) and the American Federation of Government Employees #511 (AFGE/ICE Professionals Union) issued a joint statement on March 22, 2020, asking for the nationwide closure of all immigration courts across the country.

Immigration attorneys, immigration courts staff, and immigration prosecutors are literally having to

make life and death decisions every day because of EOIR's callous disregard for the health and safety of its employees, immigrants, anyone who must come into contact with the courts, and the public. Accordingly, NJSBA is asking you to close the NJ immigration courts immediately to preserve the health and safety of the residents of NJ.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Evelyn Padin". The signature is fluid and cursive, with the first name "Evelyn" being larger and more prominent than the last name "Padin".

Evelyn Padin, Esq.
President

cc: Senator Robert Menendez
Senator Cory Booker
Matthew Platkin, Esq., Counsel to the Governor
Susan Roy, Esq., Chair, NJSBA Immigration Law Section
Angela C. Scheck, Executive Director