

Congress of the United States
Washington, DC 20515

Via Email

April 07, 2020

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington D.C. 20530

James McHenry
Director
Executive Office for Immigration Review
5107 Leesburg Pike, 18th Floor
Falls Church, VA 22041

Matt Albence
Acting Director
U.S. Immigration and Customs Enforcement
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

CC: Raymond Kovacic
Assistant Director, Office of Congressional Relations
U.S. Immigration and Customs Enforcement
500 12th Street, SW, Mail Stop 5003
Washington, DC 2-536-5003
Email: ice-congressionalrelations@ice.dhs.gov

Dear Attorney General Barr, Director McHenry and Acting Director Albence:

We write to express our concerns over the current operations of immigration court proceedings for detained immigrants. As we have requested of U.S. Immigration and Customs Enforcement (ICE) in our letter,¹ we reiterate our concerns regarding the thousands of immigrants still held in detention and how these policies exacerbate the current national public health crisis due to COVID-19. At present, New York state and city government officials have declared a state of emergency, asked all individuals to engage in the practice of social distancing, and required non-essential businesses to be placed on pause.²

¹ <https://velazquez.house.gov/sites/velazquez.house.gov/files/DHS-ICE-CBPLetter040220.pdf>

² <https://coronavirus.health.ny.gov/new-york-state-pause>

While these emergency measures are in place state- and city-wide to contain the virus, the Department of Justice is still holding immigration court proceedings for detained individuals throughout the nation. It is our understanding that these proceedings have been marred by inconsistent and frequently changing policies; the seeming impossibility of attorneys successfully filing documents that then reach the relevant immigration judge in a timely fashion; and frequent adjournments or cancellation, including of vitally important hearings such as bond hearings for people eligible for release from custody.

We respectfully request answers to the following questions related to the current status of your operations and measures that your agencies are implementing to prevent the proliferation of COVID-19. Please provide a response by April 15, 2020:

1. Please provide the average number of hearings that are actually conducted (rather than simply adjourned) and the average number of people who visit for each currently open immigration court on a weekly basis from March 24, 2020 until the present.
2. What is your rationale for continuing to keep those immigration courts open during this COVID-19 pandemic?
3. What is your rationale for not requiring uniform standing orders among all immigration courts?³
4. Specify whether the agency has established guidelines to toll deadlines, including but not limited to the one-year asylum filing deadline, all “aging out” deadlines, and the 180-day deadline to file a motion to reopen based on exceptional circumstances for the duration of the COVID-19 pandemic. If such guidelines have not been issued, explain why not.
5. What measures are your agencies taking to ensure that all necessary parties are given advance notice of any changes to hearings that are still proceeding or changes to particular immigration court practices?
6. Describe all resources and infrastructure in place to ensure detained hearings may be held via video or phone conference at the respondent’s request and with an immigration judge who has received all submissions for the duration of the pandemic. Please include the types of hearings scheduled via video conference or phone conference and resources available for needed interpreters.
7. Describe the processes in place to address issues that arise and have arisen from the electronic filing of cases and the transmission of documents by online portal, email, and fax. What protocols are in place to ensure that missed deadlines due to technical difficulties do not adversely affect the respondent's case?
8. Which courthouse personnel are designated as essential? What is the rationale for this designation?
9. What are your agencies’ protocols and practices to ensure that all individuals—including court personnel, immigration judges, attorneys, detainees, and their families and friends – are not exposed to COVID-19 while present in your facilities? Can they readily access soap, running water or hand sanitizer within your facilities?
10. What are your protocols and practices to ensure that all legal counsel, government and respondent counsel, entering and exiting your facilities are safeguarded from being exposed to COVID-19?

³ <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>

11. While Personal Protective Equipment (PPE) shortages are being experienced nationwide and guidance has been issued to reserve the use of PPE for frontline healthcare workers, why have ICE detention facilities begun to require attorneys and other legal visitors to provide and bring their own PPE—including gloves, N- 95 masks, and eye protection—before they can have an in-person meeting with their client to prepare them for their ongoing court hearings? ⁴ Does ICE have a policy requiring its own staff in detention facilities to wear PPE?
12. Describe all protocols and practices, including all relevant coordination between your agencies, to ensure that detainees are safeguarded from being exposed to COVID-19 while in transit to, or while entering and exiting, immigration hearing facilities, including protocols to ensure access to soap, running water, or hand sanitizer within your facilities.
13. Describe all protocols and practices for ensuring proper social distancing within your facilities.

During these urgent times of a global health crisis, we implore your agencies to release ICE detainees so that administrative proceedings for the duration of the COVID-19 pandemic are not necessary. We urge you to prioritize the health, safety and well-being of all parties within your facilities. Thank you in advance for your consideration and prompt attention to this serious public health consideration. Given the rapidly evolving nature of this crisis, we request your response by April 15, 2020. Furthermore, we welcome a briefing with our staff by the same date.

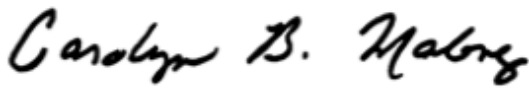
Sincerely,



Rep. Alexandria Ocasio-Cortez (NY-14)



Rep. Jerrold Nadler (NY-10)

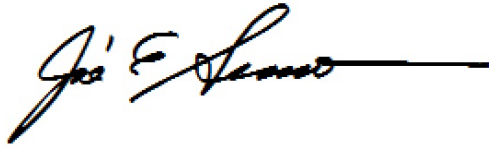


Rep. Carolyn Maloney (NY-12)

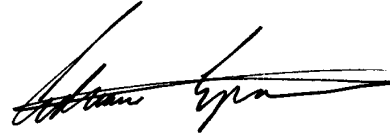


Rep. Grace Meng (NY-6)

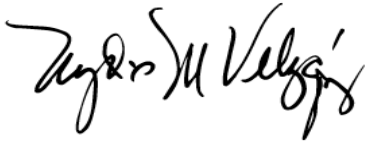
⁴ https://nipnl.org/PDFs/practitioners/our_lit/impact_litigation/2020_30Mar_nipnl-v-eoir.pdf



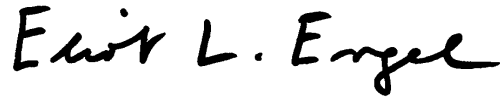
Rep. José E. Serrano (NY-15)



Rep. Adriano Espaillat (NY-13)



Rep. Nydia M. Velázquez (NY-07)



Rep. Eliot L. Engel (NY-16)