



**New Jersey Chapter**  
American Immigration Lawyers Association

July 6, 2020

**VIA ELECTRONIC MAIL**

Hon. Tracy Short, Chief Immigration Judge  
Executive Office for Immigration Review  
5107 Leesburg Pike  
Falls Church, Virginia 22041

cc: Yolanda English, Court Administrator  
EOIR, Newark Immigration Court  
[REDACTED]

Hon. David Cheng  
Assistant Chief Immigration Judge  
[REDACTED]

Chief Counsel Jane Minichiello  
Newark Office of Chief Counsel  
[REDACTED]

**RE: Prioritizing Safety at EOIR Newark from COVID-19**

Dear Chief Immigration Judge Short:

First, let me welcome you as the Chief Immigration Judge of EOIR, extend congratulations on behalf of the NJ Chapter and wish that you may have wisdom in these difficult times. With that said, I am writing on behalf of the members of the NJ chapter of American Immigration Lawyers Association to ask that your office reconsider reopening the Newark Immigration Court on Monday, July 13th.

**Now Is Not the Time to Restart Hearings**

We write you as officers of the court to urge you against holding non-detained hearings at the Newark Immigration Court. It is simply too dangerous for all parties involved to proceed with hearings at this time. Conducting hearings prematurely during a global pandemic could lead to miscarriages of justice, serious infections or illnesses, and needless deaths. At present, EOIR has scheduled to resume non-detained hearings on July 13, 2020. As of this date, the emergency declaration - and the emergency conditions that required such a declaration - remain in effect and no material change of these conditions has occurred to warrant reopening the Newark EOIR. Reopening early, without meaningful safeguards, would undoubtedly result in a setback of the progress our State of New Jersey has made in responding to the COVID-19 pandemic because of

the increase spread of infection due to the nature of the Respondents, their witnesses and representatives, who must travel from across this state and from outside the state to have their day in court. On June 29, 2020, New Jersey Governor Murphy rescinded his prior declaration allowing for indoor dining due to alarming spikes of COVID-19 in states that reopened at a faster rate.<sup>1</sup> Specifically, “the Governors and/or Health Commissioners in a number of the states that have been hardest hit by the spikes in COVID-19 cases, including Florida and Texas, have attributed the rise in cases to activities in indoor food and beverage establishments, and a number of independent public health experts have reached the same conclusion.” *Id.* The NJ AILA Chapter respectfully asks that your office take these considerations into account as they present the same risks associated with attending and completing a merits hearing in an enclosed space with circulated, ventilated air for an extended period of time.

Moreover, the New York immigration court at 26 Federal Plaza remains closed for hearings and is currently open for filings only.<sup>2</sup> As you may well know, the geographic proximity of New York and New Jersey lends itself to frequent commuting between interpreters, attorneys and respondents; thus, the risk of spreading a COVID-19 infection is further compounded by this reality. And as of June 25, 2020, the tri-state area (NJ, NY and CT) have imposed a 14 day quarantine on out-of-state visitors who are traveling from states with a 7 day average of COVID-19 infections greater than 10%. As of today, 16 states are currently on that list.<sup>3</sup> As the past 3 months of federally mandated lockdown have demonstrated, we simply do not know enough about this disease and lack adequate testing at this present moment to guarantee due process and the health and safety of those of us who must actually appear in a court setting. Given the magnitude of the consequences of imprudent, early reopening, the NJ Chapter of AILA asks that your office reconsider reopening the Newark EOIR, at the very least, consistent with its sister court across the Hudson.

### **History of the Pandemic**

On March 13, 2020, a national emergency was declared under the National Emergency Act, 50 U.S.C. § 1601, et. seq., in light of the COVID-19 pandemic. On March 9, 2020, Governor Murphy declared a state of emergency due to the outbreaks of COVID-19 in the state of New Jersey. On March 11, 2020, President Trump issued a proclamation that with some exemptions, suspends and limits the entry, as immigrants or nonimmigrants, of individuals who were physically present within the Schengen Area during the 14-day period preceding their entry or attempted entry. The same day, the World Health Organization made the assessment that COVID-19 can be characterized as a pandemic.

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<sup>1</sup> Executive Order 158, Governor Phil Murphy, dated June 29, 2020, found at <https://nj.gov/infobank/eo/056murphy/pdf/EO-158.pdf>

<sup>2</sup> “EOIR Operational Status during Coronavirus Pandemic,” U.S. Department of Justice, found at <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>

<sup>3</sup> “Travel Advisory List,” State of New Jersey, dated June 24, 2020, found at <https://covid19.nj.gov/faqs/nj-information/general-public/which-states-are-on-the-travel-advisory-list-are-there-travel-restrictions-to-or-from-new-jersey#direct-link>

There are now<sup>4</sup> more than 10,268,000 cases of COVID-19 infected persons, including over 2,586,000 in the United States alone. Over 173,000 of those infections occurred here in New Jersey.

There have been over 504,000 global deaths from COVID-19. United States leads in fatalities, with over 126,000 deaths. Here in New Jersey, we suffered approximately 15,000 deaths, including one noted member of the private bar who passed on June 3, 2020. Several other officers of the court, including at least one Government attorney and one translator also suffered severe illnesses.

Cases are on an uptick in United States. The current 5 day moving average for new infections in United States is over 42,000 COVID-19 infections per day.<sup>5</sup> This infection rate is by far the highest average infection rate recorded thus far. On June 23, Dr. Anthony Fauci<sup>6</sup>, the nation's top infectious disease expert, "testified that the virus was not yet under control in the United States."<sup>7</sup>

### **Government Responses**

Almost all New Jersey municipal and superior court functions have moved online, with some extremely limited in-person proceedings being conducted.<sup>8</sup> On June 28, 2020, the Chief Judge of the District of New Jersey found criminal proceedings and felony sentencing "still cannot be conducted in person without seriously jeopardizing public health and safety".<sup>9</sup> EOIR Newark issued a Standing Order on June 19, 2020.<sup>10</sup> That order permits telephonic appearances for merits and master hearings.

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<sup>4</sup> "COVID-19 Dashboard", Johns Hopkins University & Medicine, accessed June 29, 2020, found at: <https://coronavirus.jhu.edu/map.html>

<sup>5</sup> "Daily confirmed new cases (5-day moving average)", Johns Hopkins University & Medicine, accessed June 29, 2020, found at: <https://coronavirus.jhu.edu/data/new-cases>

<sup>6</sup> Dr. Anthony S. Fauci is the Director of the National Institute of Allergy and Infectious Disease. See <https://www.niaid.nih.gov/about/director>

<sup>7</sup> "Fauci, Citing 'Disturbing Surge,' Tells Congress the Virus Is Not Under Control", *The New York Times*, June 23, 2020, found at: <https://www.nytimes.com/2020/06/23/us/politics/fauci-congress-coronavirus.html>

<sup>8</sup> "COVID-19 Home", New Jersey Courts, accessed June 29, 2020, found at: [https://njcourts.gov/public/covid19\\_one-stop.html](https://njcourts.gov/public/covid19_one-stop.html); see also "State Court Closing Information", New Jersey Courts, accessed June 29, 2020, found at: <https://njcourts.gov/courts/closings.html>

<sup>9</sup> "Extension of Amended Standing Order 2020-06", United States District Court for the District of New Jersey, found at: <https://www.njd.uscourts.gov/sites/njd/files/SO20-06CARESActExtensionStamped.pdf>

<sup>10</sup> "Standing Order Regarding Telephonic Appearances for Master and Merits Hearing", EOIR Newark, issued June 19, 2020, found at: <https://www.justice.gov/eoir/page/file/1287336/download>

The Social Security Administration closed all in-person services effective March 17, 2020, and have no reopening information listed.<sup>11</sup> Likewise, the Internal Revenue Service has no offices open anywhere within a 500 mile radius of Newark.<sup>12</sup> USCIS began some very limited in-person services on June 4, 2020 but has yet to resume processing biometrics appointments.<sup>13</sup>

Because COVID-19 cases continue to spread like wildfire across the country, on June 23, 2020 a group of 12 United States Senators delivered a letter<sup>14</sup> to EOIR not to resume hearings at this time. Senator Warren led the letter, which contains the signatures of both New Jersey Senators Booker and Menendez. None of the substantive health issues raised in the letter have been addressed by EOIR. Meanwhile, on June 29, 2020 Governor Murphy paused the resumption of indoor dining due to data about recent COVID-19 infection spikes.<sup>15</sup> Much of New Jersey's indoor activities are still unable to function due to the COVID-19 global pandemic, or are required to function at a greatly reduced capacity.

### **Unnecessary Danger of Increased Risk of Severe Illness or Death**

COVID-19 is a communicable disease easily spread between people who are in close contact with one another and through respiratory droplets. EOIR staff, Office of the Chief Counsel staff, the private bar, Respondents and the public at large (in the form of witnesses and family members) will all be exposed to infection if proceedings are conducted. Master hearings involve large groups of people, often more than fifty per docket, and several judges can hear master dockets during the same time morning or afternoon. Attorneys, staff, and the public regularly travel from all over New Jersey, New York, Connecticut and Pennsylvania. This is a recipe for disaster and disease. Even if an attorney and client opt to conduct a hearing telephonically, that puts the attorney, client, and any witnesses in a confined space for a long period of time, hovering over a telephone to be audible to the Court. It is not safe.

Restarting hearings in non-detained matters at the height of the pandemic is not necessary. It is not necessary for all parties involved to risk our lives. While this may sound dramatic, a member of the private bar has already died from COVID-19, and the attorney possibly was infected while at EOIR in March 2020. Again, approximately 15,000 people have died of this disease in New Jersey alone. Many EOIR staff, Government staff, members of the private bar, our clients, and their families are considered at higher risk of serious illness or death from COVID-19.

### **Due Process Concerns**

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<sup>11</sup> "Office Closings and Emergencies", Social Security Administration, accessed June 29, 2020, found at: <https://www.ssa.gov/agency/emergency/>

<sup>12</sup> "Search Results", Internal Revenue Service, accessed June 29, 2020, found at: <https://apps.irs.gov/app/officeLocator/index.jsp?zipCode=07102&radius=1500&submit=1>

<sup>13</sup> "USCIS Response to Coronavirus (COVID-19)", United States Citizenship & Immigration Services, accessed June 29, 2020, found at: <https://www.uscis.gov/about-us/uscis-response-covid-19>

<sup>14</sup> "Letter to EOIR Director McHenry", Sen. Elizabeth Warren et al, dated June 23, 2020.

<sup>15</sup> "Executive Order No. 158", Gov. Phil Murphy, State of New Jersey, found at: <https://nj.gov/infobank/eo/056murphy/pdf/EO-158.pdf>

Almost all members of the private bar are still not seeing clients in person due to valid fears of infecting ourselves, our clients, our families and our staff. It is impractical if not impossible to properly prepare for a merits hearing without meeting with a client in person; applications cannot be reviewed; affidavits cannot be properly drafted; evidence cannot be obtained; witnesses cannot review declarations. Even for master hearings, it is difficult to prepare for a hearing without being able to meet with a client. There is no way to have a client sign documents like written pleadings, or to have time to review documents for submission and prepare them for the court.

Evidence, and the lack thereof at this point, is another serious concern. School records are unavailable because schools are closed. Government offices are closed, and as such clients are unable to obtain criminal and/or family court records, tax transcripts, benefit statements, or motor vehicle records, to name a few items. As our clients are by definition foreign-born, the global pandemic has effectively ended the ability to obtain documents from abroad as well. Documents cannot even be mailed from abroad in some cases. Our clients cannot proceed to a merits hearing without having a fair chance at obtaining documents prior to their final hearings.

#### **Communication to the Private Bar and the Public**

As officers of the court, we ask EOIR to inform us and our clients what steps are being taken to ensure our safety at any future hearing. How does one social distance in a security line? How is the building allowing people to socially distance in the elevators? The elevators are small and would not allow more than one person at a time. As the court is on the 12th floor, it is impractical to walk up to the court. How would social distance be maintained in the courtroom between attorney and client? Many judges have more than one individual hearing scheduled for one time slot, requiring several groups of people to be present at once. Add in witnesses, translators, court staff, and government staff, and EOIR quickly becomes dangerous. We would like some knowledge as to what steps GSA has taken to ensure the public's safety when accessing the building.

#### **We Implore the Court to Prioritize Safety**

We eagerly look to a future when we can return to court. Our clients have often waited many years for their day in court, and while delays are less than ideal, safety should be our shared paramount concern. The COVID-19 global pandemic has killed more than half a million people so far. It has touched us all as members of the private bar with the loss of one of our own. We are not willing to lose more.

Sincerely,

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Cesar Estela, Chapter Chair  
On behalf of the members of the  
New Jersey Chapter of AILA