



March 22, 2020

Assistant Chief Immigration Judge Philip J. Montante, Jr.
Office of the Chief Immigration Judge
Batavia Immigration Court
4250 Federal Drive, Room F108
Batavia, NY 14020

Re: IMMEDIATE PROGRAM CHANGES TO PROTECT OUR STAFF

Dear Honorable Judge Philip J. Montante, Jr.:

On March 17, 2020, Prisoners' Legal Services of New York ("PLSNY") and the ECBA Volunteer Lawyers Project ("VLP") wrote a joint letter to Your Honor urging that the Batavia Immigration Court implement operational changes to safeguard the health and wellbeing of our attorneys and clients during the COVID-19 pandemic. A copy of that letter is annexed hereto. To date we have received no response.

Since sending our letter, PLSNY and VLP attorneys and clients have experienced unsafe conditions in the courtroom, including courtrooms filled with more than 10 persons; minimal separation between our detained clients; and the shared use of desks, chairs, and microphones amongst defense attorneys. These dangerous conditions contravene Governor Cuomo's executive orders and place the safety of our clients, staff, and their families in jeopardy. The Batavia Immigration Court, unlike all other New York State and federal courts in New York State, has not adopted any precautionary measures to safeguard the health of those appearing before it. The notice now posted limiting the number of people in the courtroom is insufficient and only means that more people will need to congregate in the waiting area.

Compounding these serious problems, ICE yesterday issued new guidance on detention policies during the COVID-19 pandemic.¹ Under this guidance, "ICE/ERO now requires all legal visitors . . . to provide and wear personal protective equipment (PPE) (disposable vinyl gloves, N-95 or surgical masks, and eye protection) while visiting any detention facility."² This policy effectively prohibits our staff from visiting the facility since, as the New York Times reported on March 19, even frontline medical workers "are confronting a dire shortage of masks, surgical gowns and eye gear to protect them from the virus."³

¹ <https://www.ice.gov/covid19>

² *Id.*

³ <https://www.nytimes.com/2020/03/19/health/coronavirus-masks-shortage.html>

In light of these continuing circumstances and consistent with the Governor's executive orders, we are regretfully compelled to inform Your Honor that, effective immediately, to protect the health of our staff and their families, no PLSNY or VLP attorney will appear in person in the Batavia Immigration Court. A copy of Governor Cuomo's most recent order is enclosed, in addition to a list of PLSNY and VLP attorneys for Your Honor's reference. We also enclose the March 22, 2020, letter to EOIR from AILA, the National Association of Immigration Judges, and the AFGE # 511 ICE Professional Union, which reiterates our reasonable demands that all immigration courts cease in-person hearings immediately.

We profoundly regret not being able to appear in person for our clients and hope to be able to do so again soon. However, we strongly believe that we must take these steps to protect the health of our staff and to advance the general public health goals of avoiding close personal contacts that can cause risks of fostering contagion. As explained in our previous letter to the Court, we continue to request that all PLSNY and VLP hearings be cancelled or adjourned and all scheduled deadlines be extended in light of the significant safety concerns involved in representing detained clients during the COVID-19 pandemic. Should Your Honor continue to conduct hearings for PLSNY and VLP clients, our attorneys stand ready to appear by telephone. In order to make telephonic appearances possible, we are eager to work cooperatively with DHS and the Court to secure remote access to our clients and a temporary means for us to file remotely (through e-filing or another means).

Very truly yours,

Karen L. Murtagh
Executive Director
Prisoners' Legal Services of New York

Robert M. Elardo
Executive Director/CEO
ECBA Volunteer Lawyers Project

Encl: March 17, 2020 PLS/VLP Letter
List of PLSNY and VLP Attorneys
Gov. Cuomo's Executive Order 202.8
March 22, 2020 letter to EOIR from AILA, the National Association of Immigration Judges, and the AFGE # 511 ICE Professional Union

cc: Stephanie L. Kerr, Acting Court Administrator, Batavia, NY
Department of Homeland Security, Office of Chief Counsel, Batavia, NY