

David Patton
*Executive Director and
Attorney-in-Chief*

March 15, 2020

VIA EMAIL

Chief Judge Robert A. Katzmann
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, New York 10007

Chief Judge Roslynn R. Mauskopf
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Chief Judge Colleen McMahon
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Federal Defenders' Operations

Dear Chief Judges Katzmann, Mauskopf, and McMahon:

I write to apprise you of Federal Defenders of New York's change in operations in light of COVID-19 and how it may impact our work with the Courts. I ask that you share this letter with your colleagues.

On Saturday morning, one of our secretarial support staff was told by her doctor that she has likely contracted COVID-19. She was administered a test, but the results will not be available until Wednesday. Another employee who is in close contact with that employee is symptomatic and will be tested tomorrow. I have learned from the United States Attorney's Office in the Southern District of New York that an agent with the Joint Terrorism Task Force and a security officer at the front desk of St. Andrews have tested positive. Apparently, one other agent and an AUSA likely have contracted the virus but have not yet received test results.

In light of this news and guidance from public health officials, we cannot continue with normal, in-person office operations. Beginning Monday, our offices will begin operating remotely. We will do our best to serve our clients as we always have. Certain tasks cannot be accomplished remotely, notably in-court appearances or the filing of hard-copy submissions, and

we will do our best to appear and file as we have. But to the extent that we seek accommodations in individual cases, we would greatly appreciate the Courts' consideration. In many cases we will seek to adjourn all non-essential conferences and proceedings. In some cases, we will seek an extension of filing deadlines until after the emergency, and in others we will likely ask to file electronically without the provision of hard copies. For those cases involving detained clients and reasons to proceed promptly, we may request remote proceedings where appropriate. Indeed, in some cases involving detained clients we may seek expedited proceedings.

With respect to new cases, we will plan to implement a duty schedule (similar to our Saturday schedules) whereby attorneys will only come to the office or court as necessary. We will assure that all of the relevant courthouse actors have the appropriate contact information for those attorneys. Please keep in mind that for all cases, new or old, we will be restricted in the work we can do. We will not have staff like paralegals, investigators, social workers, and secretarial and clerical support staff available to do the many tasks they normally do in-person.

I have written to the United States Attorneys' Offices asking that they not engage in business as usual with respect to new cases. Absent extraordinary circumstances, namely cases that involve an imminent threat of violence, it does not advance public safety to add more people to our local jails. On Thursday last week Judge Orenstein found that putting people in the MDC now presents a danger to the community, including the community of people in the jail. He is right. I truly believe the jails are ticking time bombs. I hope I am being alarmist and that a few months from now everyone will have a good laugh at my expense recalling how I overreacted to this situation. But the jails are not sanitary or safe in the best of times. They do not provide adequate medical care in the best of times. They are surely about to experience a dramatic staffing shortage (on top of their baseline staffing shortages). There are many in those jails (and GEO and Valhalla) who are older or medically compromised as defined by the CDC, and they are in grave danger. My lawyers and CJA already are starting to seek bail for certain high risk people under the Bail Reform Act's provision for temporary release for any "compelling reason." I cannot imagine a more compelling reason than the situation we face now.

In addition, because of the BOP's nationwide lockdown, on top of the health issues, people in the jails will have an extraordinarily difficult time speaking with counsel, much less meaningfully preparing a defense (which may be time-sensitive from the defense perspective and not solved by simply adjourning matters). Over the last two days, lawyers have been asking BOP attorney Nicole McFarland to set up legal calls or visits for clients with upcoming trials or proffers or serious medical conditions; so far, not a single one has been scheduled by the BOP.

Chief Judges Katzmann, Mauskopf, and McMahon
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I thank you for your leadership in these challenging times. I will keep you updated as we continue to evaluate our operations. I hope you stay safe and healthy.

Respectfully submitted,

/s

David Patton

cc: Second Circuit Judges
EDNY District and Magistrate Judges
SDNY District and Magistrate Judges
Richard Donoghue, EDNY United States Attorney
Geoffrey Berman, SDNY United States Attorney