



The National Association of Immigration Judges  
Urgently Calls for Immediate Implementation of Required Health and Safety Measures for the  
Immigration Courts During the Coronavirus Pandemic

March 30, 2020

During this historic and unprecedented pandemic, the immigration courts are in the midst of a crisis created by EOIR. One current immigration judge who is a U.S. military veteran summarized the state of affairs:

*I don't say this lightly, but EOIR has demonstrated that they need to be gutted and rebuilt from the ashes. I've never witnessed an utter lack of concern for people like I have here. In my former life, we treated captured Taliban and ISIS with more humanity. Moreover, I've never seen worse leadership. A crisis usually brings good and bad to the light. We have nothing but darkness.*

*--3/26/2020 Communication to NAIJ from Immigration Judge (Name Withheld)*

This judge's remarks aptly capture what we are all experiencing at EOIR in the face of this pandemic. EOIR's failure to take prompt, appropriate and sufficient action on court closures has created a dangerous environment placing at risk the health and lives of judges, court staff, practitioners, detained respondents, and all individuals who interface with the court process as well as the broader community.

In a [statement released March 26, 2020](#), EOIR wrote that it "takes the safety, health, and well-being of its employees very seriously." We can assure you that judges and court staff would overwhelmingly take issue with this assertion.

In the same statement, EOIR attempts to justify the continued operation of the detained courts by claiming that "EOIR's current operational status is largely in line with that of most federal courts across the country, which have continued to receive and process filings and to hold

critical hearings, while deferring others as appropriate.” EOIR’s status is absolutely not in conformity with courts across the country. A compilation of the federal courts’ responses can be [found here](#). The vast majority of courts around the country, and particularly those in pandemic hot-spots, have closed operations for even criminal trials and almost all other purposes and clearly and decisively extended filing deadlines.

EOIR’s refusal to close detained courts causes a cascade of social interaction that puts all of us at risk. It requires judges and court staff to continue to travel to courthouses and work shoulder-to-shoulder in hearings. Interpreters continue to fly around the country to attend court sessions. Detainees are moved by security officers within detention facilities and are frequently brought in large groups into courtrooms, or wait in large groups outside courtrooms in order to enter courtrooms individually. Immigration attorneys continue to travel to courthouses and wade through security lines even when telephonic appearances are permitted, pressured both by their internal sense of responsibility to zealously advocate for their clients and also by their paying clients. Families of respondents continue to travel to immigration courthouses to see their loved ones and attempt to serve as witnesses in their hearings. Paper is passed back and forth amongst all the parties appearing in court as legal briefs, court orders, reams of paper evidence, and paper court files get passed from hand to hand every day in our largely paper-based immigration courts.

There are currently several dozen dedicated and “hybrid” detained courts that remain open under a “business as usual” mode of operations. Many of these courts are in areas with known high concentrations of coronavirus infections and where there are local and state-wide travel restrictions in place, such as New York, New Jersey, Illinois, Miami, California, and others. From West Coast to East Coast, court after court has had to grapple with incident reports of COVID-19 exposure or positive test results of staff and the public. Examples include the Los Angeles, San Francisco, Aurora (Colorado), Elizabeth (New Jersey), Varick (New York), Krome (South Florida), Seattle, Conroe (Texas), LaSalle (Louisiana), Fishkill (New York), Ulster (New York), Boston, Newark, and San Antonio Immigration Courts. In response, EOIR’s actions have ranged from unacceptable to unconscionable. To date, EOIR has failed to provide information or transparency as to what standard it is using to determine when a court should be “deep cleaned” but remain open, or closed and for how long. Repeatedly, the EOIR has failed to provide timely and complete information to the impacted individuals. Yet, the entire EOIR community across the country was notified when an individual in the same building as the EOIR director tested positive for COVID-19. Not surprisingly, this mode of operation has contributed to both the increased risk of exposure and actual exposure to COVID-19 and the spread of the virus within the community.

There is no safe way to run the detained immigration courts during a pandemic because of the amount of social interactions that the courts require. NAIJ is very concerned, however, about the safety of the population of detained respondents during this pandemic because of the close quarters of detention facilities. The solution is to continue to hold bond hearings to the extent possible through telework. Bond hearings are frequently off-the-record and are often done through the oral proffer of evidence. The vast majority of bond decisions made by immigration judges are not complicated factual determinations requiring lengthy evidentiary hearings, and the judges' decisions are often accepted by the parties. These can readily be accomplished by teleworking judges and court staff, which would dramatically limit person-to-person interactions. The judge, the attorney for DHS, the respondent and his attorney, and an interpreter can easily be connected by telephone. The court can then conduct a full bond hearing, listening to a proffer of evidence presented by all parties. As needed, court files can be sent to teleworking judges as is being done now for teleworking judges in the non-detained courts. Any appeals of bond decisions can follow the current course of action of triggering a written decision upon filing of a notice of appeal.

This solution of bond hearings by telework is every bit as straightforward as it sounds, but EOIR has refused to even discuss this option with NAIJ. In addition to this common-sense approach, NAIJ has several other specific proposals designed to minimize social interactions and maintain a fair proceeding, set out in an attached document.

**NAIJ Proposals for Running a Safe and Fair  
Immigration Court System during the COVID-19 Pandemic**

1. All non-detained master calendar and merits hearings, including the Migrant Protection Protocol hearings, set between now and **April 30, 2020** should be postponed and all filing deadlines extended by a blanket extension.
2. Represented respondents are strongly encouraged to submit written pleadings by mail as described in section 4.15(j) of the Immigration Court Practice Manual so that when cases are rescheduled, they can be scheduled directly to individual merits hearings. Whenever possible, any application which is needed should be attached to the pleadings, with evidence that fees have been remitted. No original signatures should be required.
3. Prioritize detained cases where liberty and due process interests are at stake due to continued custody by instituting telephonic bond hearings. Allow bond hearings for detained respondents to be conducted via moving papers ruled upon by remote court technology by assigned Immigration Judges, based on electronically-transmitted requests and supporting evidence. Where a respondent is detained and unrepresented, the custodian of the facility where s/he is held is responsible for transmitting such requests. Where represented by counsel, the respondent's attorney shall make such submissions to the email address posted by EOIR for such purpose; if the matter is to be heard in an electronic record of proceedings (ECAS) court and counsel has "opted-in" to ECAS, such submissions shall be made according to ECAS guidelines. If a party requests an evidentiary hearing on a bond redetermination request, that hearing shall be conducted telephonically unless proceeding telephonically would be inconsistent with an order of a federal court.
4. Individual merit hearings of detained individuals shall be postponed until after April 30, 2020, unless the respondent and/or counsel request that the hearing proceed telephonically at the earliest possible date. To accommodate those requests, the hearings will be conducted by Immigration Judges using Digital Audio Recording (DAR)-enabled laptops. Accordingly, priority should be given to supplying sufficient DAR laptops to the Immigration Judges assigned to handle the detained merits dockets via remote court technology.
5. Credible fear, reasonable fear, and claimed status review proceedings shall also be conducted telephonically by Immigration Judges using DAR-enabled laptops.

6. In non-detained matters where the parties agree that relief should be granted and background checks are complete, or where there is an agreement that an order of removal or voluntary departure should immediately be issued, a written motion indicating the agreement of the parties to this result should be made and the decision will be made by the assigned Immigration Judge on the papers based on the electronically submitted moving papers.
7. Requests for continuances and extensions of filing deadlines should be liberally granted, particularly where a stay-at-home or shelter-in-place order is in effect or where counsel, the respondent or a close family member is in a category of people described by the CDC as being at high-risk, such as but not limited to, persons 65 years of age or older, persons with high-risk medical conditions or compromised immune systems, or persons at risk of infecting a close family member or cohabitant who is at risk.

To facilitate the implementation of these proposals,

1. Records of proceedings must be provided to the Immigration Judges prior to hearings, with sufficient time for the judge to review and prepare for the hearing;
2. The court should incorporate adjustments to the normal filing requirements. For example, the court can issue an order discouraging late filings, and/or late filings may result in a postponement of the scheduled hearing to enable the opposing party to respond and/or prepare. Filings that are defective for technicalities that can be cured at a subsequent hearing should not be returned but will not be considered as properly filed until the defect is cured or waived by the Immigration Judge.
3. The court must identify adequate support staff and/or a designate court administrator(s) whom the court and the parties can contact telephonically for the purposes of (i) providing counsel's updated phone number for an upcoming telephonic appearance, as it may differ from the number provided on the Form E-28; (ii) obtaining clarity on the status of counsel's emergency motions related to the coronavirus; and (iii) e-filing or filing by facsimile with the court.

We also strongly encourage the Department of Justice to seek legislative authority and/or amend regulations to extend or suspend deadlines that are currently set by statute but where parties are likely to be adversely impacted by the coronavirus pandemic.