

# Despite Coronavirus, 'The Machinery Continues' at Immigration Courts

[Erich Wagner](#) April 20, 2020 05:31 PM ET



A guard watches as asylum seekers attending a mandatory immigration court hearing walk through a door Monday, March 16, 2020, in El Paso, Texas. Cedar Attanasio/AP

## [Management](#)

### Despite Coronavirus, 'The Machinery Continues' at Immigration Courts

**Immigration judges and employees at the Executive Office of Immigration Review said the agency's informal policy to keep offices and courts open puts deportations over workers' safety.**

For weeks, employees at the Executive Office of Immigration Review's immigration courts and offices have noticed a trend: whenever someone exhibits coronavirus symptoms, the agency quietly shuts the facility down for a day or two, cleans the office, and then reopens.

The frequency of these incidents, combined with the apparent refusal by management to take more proactive steps, like temporarily closing immigration courts altogether or instituting telework for EOIR support staff, have employees and judges fearing that the Trump administration is more concerned with keeping up the volume of immigration case decisions than the health of its own workforce.

Since *Government Executive* [first reported](#) on an instance of an employee with COVID-19 symptoms at a Falls Church, Virginia, EOIR office last week, there have been three additional incidents at that facility, including one where the person eventually tested positive for coronavirus. An office in the Dallas-Fort Worth area also was closed for two days in March after someone exhibited symptoms of the virus.

Additionally, the agency has announced on its official [Twitter account](#) more than 30 immigration court closures, most only for one or two days, across the country. Although in most instances officials do not explain the closures, National Association of Immigration Judges President Ashley Tabaddor said that if there is no reason listed, "you can be sure" it is a result of coronavirus exposure.

"Everything is reactive," Tabaddor said. "They put everyone at risk, and then when there's an incident reported, they shut down the court for a day and then force people to come back to work. At Otay Mesa [in San Diego] there's a huge outbreak, but they still haven't shared that information . . . Sometimes we get the info and sometimes we don't, so we don't know how accurate or complete it is. There's no faith that everyone who needs to be notified has been notified."

Nancy Sykes, president of the American Federation of Government Employees Local 2525, which represents staff at EOIR's office in Falls

Church said the amount of information provided to employees about coronavirus-related incidents has actually decreased in recent weeks. Although after the first incident, EOIR Director James McHenry emailed staff and provided information about when the employee was symptomatic and in the office, subsequent notifications were sent out by Acting Board of Immigration Appeals Chairman Garry Malphrus and omitted key information about when symptomatic individuals were in the building.

"Employees are scared, they're concerned," Sykes said. "They don't really trust what's coming from management just because of the lack of details being shared. There's a lag in information: by the time something is revealed, so much time has passed, so nobody's clear how that process works and why it takes so long to get notice out to employees."

In a statement, EOIR spokeswoman Kathryn Mattingly said that the agency "takes the safety, health and well-being of employees very seriously," but that the workforce is critical to ensuring the due process of detained suspected undocumented immigrants.

"Accordingly, EOIR's current operational status is largely in line with that of most courts across the country, which have continued to receive and process filings and to hold critical hearings, while deferring others as appropriate," Mattingly wrote. "Recognizing that cases of detained individuals may implicate unique constitutional concerns and raise particular issues of public safety, personal liberty, and due process, few courts have closed completely."

## **A Series of Half Measures**

Agency management has taken some steps to mitigate employees' exposure to COVID-19. On March 30, the agency postponed all hearings related to individuals who are not being detained while they await

adjudication. The agency is also encouraging the use of teleconferencing, video-teleconferencing and the filing of documents by mail or electronically, and some attorneys, paralegals and judges have been able to make use of telework to reduce the amount of time they spend in the office.

But thus far, the agency has refused to postpone hearings for detained individuals, a matter that is now the subject of a [federal lawsuit](#) brought by immigration advocates and attorney groups. And the agency has denied telework opportunities to support staff in EOIR offices and immigration courts across the country.

Sykes said the lack of telework is in part a capacity issue—the agency does not have the amount of laptops on hand to distribute to employees. But she suggested that local management may be prohibited from encouraging workplace flexibilities by agency or department leadership.

“We’ve asked management about doing something where you could have employees come in shifts every other day, or over a week’s time in rotation to pick up and drop off work materials, so that there’s less exposure when coming into the office,” she said. “But they said they have not been authorized to make those types of changes to our business. When my board management says they don’t have the authority, that means it’s over their heads.”

Tabaddor said she has heard similar stories that everything judges and supervisors authorize regarding coronavirus response must be “cleared” by someone up the chain of command.

“Supervisory judges, our first line of supervisory contact, they were told that they cannot put anything in writing about the pandemic or COVID,” she said. “Anything they want to do related to that has to be cleared by HQ and, essentially, the White House. So, to date, they haven’t been told what

standards and protocols are to be used. The only thing they've been told is if there's a report of any incident, they are to kick it up to HQ and wait for instructions."

On Monday, McHenry sent an email to EOIR employees announcing that the agency has ordered face masks for employees to wear when they report to the office, and said they would be available "next week."

"Once delivered, supervisors will provide their staff with information regarding distribution to employees who are not telework eligible and are working in the office," McHenry wrote. "Even while using face coverings, however, please continue to be vigilant in maintaining social distancing measures to the maximum extent practicable and in following CDC guidance."

## **Production Over People**

Agency employees said what they have seen over the last month suggests that the agency is prioritizing working on its more than 1 million case backlog, and enabling the Homeland Security Department to continue to apprehend suspected undocumented immigrants, at the expense of the wellbeing of its workforce.

"Everything is designed under the rubric that the show must go on," Tabbador said. "While we've been focused on public health first . . . the department says, 'Nope, we need to make sure that the machinery continues. To the extent that we can acknowledge social distancing as long as business continues, we can do it. But between business and health considerations, business as usual supersedes health."

Sykes said the agency's resistance to making basic changes to protect its employees is troubling.

"To me, the only other explanation is the immense backlog that we have of immigration appellate cases building up, and the need to continue working on that backlog even in light of the current pandemic," she said. "It's very unnerving, because I believe this will continue, and I don't have any other indication that we're not going to just continue operations as is. We now finally have a confirmed case [in the building] and there's still no change."

In an [affidavit](#) filed in response to the lawsuit seeking to postpone immigration court hearings for detained individuals, McHenry said he has given individual immigration courts leeway to respond as needed to the COVID-19 outbreak in their communities.

"Because COVID-19 has not affected all communities nationwide in the same manner and because EOIR's dockets vary considerably from court to court, the challenges presented by COVID-19 are not the same for every immigration court," McHenry wrote. "In recognition of these variances and of the fact that local immigration judges and court staff are often in the best position to address challenges tailored to the specifics of their court's practices, EOIR has not adopted a 'one size fits all' policy for every immigration court, though it has issued generally-applicable guidance regarding access to EOIR space, the promotion of practices that reduce the need for hearings, and the maximization of the use of telephonic and [video conferencing] means through which to hold hearings."

But he also suggested it could hamper the work of Immigration and Customs Enforcement and the ability of the Border Patrol to keep arresting suspected undocumented immigrants.

"The blanket postponement of all detained cases in removal proceedings, including initial master calendar hearings for aliens recently detained by DHS, would make it extremely difficult for DHS to arrest and detain aliens

prospectively, even aliens with significant criminal histories or national security concerns, because of the uncertainty of how long an alien would have to remain in custody before being able to obtain a hearing in front of an [immigration judge] that may lead to the alien's release," he wrote.