

Legal Community Says Immigration Court Reopening Lacks Transparency, Safety Measures



People wait at an immigration center on the International Bridge 1, in Nuevo Laredo, Mexico, on July 16, 2019. (AP Photo/Marco Ugarte)

(CN) — Plans to resume immigration court hearings for non-detained defendants at a handful of courts across the country lack safety measures necessary to prevent the spread of Covid-19, immigration judges and attorneys told Courthouse News this week.

While the Executive Office for Immigration Review — the Justice Department arm which oversees immigration court operations across the country — suspended hearings for non-detained immigrants in March after calls to shut down the courts during the novel coronavirus pandemic, the

courts [remained open](#) for limited operations including video teleconference hearings for detainees.

But this week, Honolulu Immigration Court was the first to resume merits hearings for non-detained defendants paroled into the community after EOIR [announced](#) June 11 the court would resume in-person hearings.

A handful of other immigration courts including Boston, Buffalo, Dallas, Hartford, Las Vegas, Memphis and New Orleans Immigration Courts will resume holding hearings for non-detained cases on Monday, June 29.

The Cleveland Immigration Court will likewise resume hearings Monday, July 6.

But the [criteria](#) for determining which immigration courts are safe to resume in-person hearings for non-detained defendants has not been publicly disclosed by EOIR.

A concerned cohort of senators, including [author](#) Senator Ed Markey, D-Mass., and co-sponsors, Senators Bernie Sanders, I-Vt., Richard Blumenthal, D-Conn., Elizabeth Warren, D-Mass., and Kamala Harris, D-Calif., introduced the [Immigration Enforcement Moratorium Act](#) Thursday, which would halt deportations and arrests during the pandemic.

The legislation would also suspend in-person court proceedings, citing immigration judge and attorney groups who have called in-person removal proceedings during the pandemic "irresponsible."

A 7-page memo on EOIR practices related to the Covid-19 outbreak, also released June 11, noted there is no "one-size-fits all plan for resuming operations applicable to every location."

It did not include detailed safety measures that will be employed at immigration courts beyond requiring all people to wear masks and practice "social distancing guidelines to the maximum extent practicable."

The EOIR's [response](#) to the pandemic including its communications to staff and the public about its operations and closures, are currently [under review](#) by the Office of the Inspector General.

The Department of Justice did not return Courthouse News' request for details on how reopening determinations are being made.

Judge Ashley Tabaddor, president of the National Association of Immigration Judges union, said in an interview with Courthouse News EOIR has not told immigration judges how the decision to resume non-detained hearings is being made.

"They won't share their reopening plan with us and are providing generic answers," Tabaddor said.

"The most we have gotten from EOIR is that reopening is based on local conditions, maybe the U.S. Attorney's Office is making the initial call," she added.

American Immigration Lawyers Association Senior Policy Counsel Laura Lynch said immigration attorneys told her immigration courts are following lockstep the reopening plans of local U.S. Attorney's Offices, though no defined reopening plans for phase one, two and three reopening have been revealed.

Lynch said the lack of transparency regarding criteria being used to determine certain courts are safe to resume in-person hearings is creating unnecessary chaos in the courts.

"The agency's response to the pandemic overall has been chaotic and is another reminder EOIR is not an independent court but under the Department of Justice," Lynch said.

"Decisions about whether courts are open or closed are political decisions not based on science or facts," she added, noting a Miami Herald [report](#)

that court closure decisions were being made by the White House.

Lynch also noted the lack of information sharing by EOIR is a deliberate choice; at the beginning of the pandemic, EOIR would publicly announce via Twitter when courts were closed for “deep cleaning” due to Covid-19 exposure at a courthouse.

That notification practice was abandoned in April, Lynch said, noting it is opposed notification practices by other immigration agencies, including Immigration and Customs Enforcement, which is [tracking](#) and releasing Covid-19 data on positive cases at its facilities.

Tabaddor noted EOIR has not even sent the agency-wide email notices immigration judges typically receive for court closures and interruptions, calling it an “extreme communication gap.”

“The devil is in the details and they need to take a local approach based on statistics and data,” Tabaddor said.

“What objectively verifiable data sets are you using? Why aren’t they sharing it publicly,” she added, noting EOIR has not disclosed how it will enforce social distancing in courthouse lobbies, elevators and courtrooms where counsel sits shoulder-to-shoulder with their clients.

The lack of transparency on safe reopening procedures prompted AILA and other NGOs this week to send EOIR a [letter](#), calling its reopening plans “premature” and calling for the continued postponement of non-detained hearings. The group also asked for a meeting with EOIR, though Lynch said the agency has not responded to that request.

Attorneys are also concerned without an EOIR moratorium advising immigration judges not to issue in absentia orders for defendants who fail to show up to their court hearings for covid-related reasons, judges could order their deportation.

The fear isn't unwarranted: In March, ProPublica [reported](#) the chief judge of a New York court told employees to issue in absentia deportation orders if immigrants didn't show up for their court hearings, even if coronavirus was the suspected cause.

Tabaddor said she has advised members of the judges' union "to be mindful of the realities on the ground" before issuing in absentia orders during the pandemic.