



NAIJ Stakeholder Town Hall Takeaways

Background

NAIJ proudly sponsored our first-ever virtual Stakeholder Town Hall on July 22, 2020. The Stakeholder Town Hall was exceptionally well received with more than 800 registrants. Attendees included ICE attorneys, AILA members, private bar attorneys, NGO representatives, academics, Hill staffers, EOIR judges and staff, as well as members of the media. Our purpose in sponsoring this event was to share the limited information we knew about the current operations of the court, allow all stakeholders to share their concerns and discuss the commonality of our interest to help EOIR ensure a healthy and safe environment while improving the quality of service we provide during these difficult times. Although we had to limit the number of speakers - the panel participants were representatives from AILA, the ICE attorneys union, AFGE Local 511 and Legal Aid Society chapter of the Association of Legal Aid Attorneys- we benefited greatly from the overwhelming response received in the form of questions asked both in advance of and during the Town Hall and written suggestions.

One of our takeaways is the fact that many attendees were surprised to hear that Immigration Judges are often as much in the dark as are stakeholders as to when individual detained or non-detained courts are opened or closed, how the decision is made to open a court, and what takes place during closures. Despite labor law mandates and the tireless work of NAIJ to improve that process, EOIR has chosen to make those decisions without our involvement, and generally without advance notice to EOIR judges and staff as well. Because of this posture, NAIJ has filed several grievances, most of which are still pending in various stages, in an effort to improve that situation. These can be found at www.naij-usa.org under the Coronavirus section of the News tab.

We hear, and share, the frustration expressed regarding the methods of communication used by EOIR to transmit information on the status of individual courts and individual cases. We, too, find the status quo to be highly problematic.

We are acutely aware of the difficulties our ever-changing calendars (either detained or non-detained dockets) have caused participants, in terms of last minute cancellations requiring them to wastefully prepare cases only to have to repeat the process months (or years) later when the case finally comes to hearing, as well as the great burden that short notice of a merits hearing places on those who need to prepare.

Perhaps most importantly, it was clear that all stakeholders, including Immigration Judges, are deeply concerned that the court operations not put anyone's health, safety and well being in jeopardy and that appropriate standards be observed with regard to when courts are opened or closed and as to how hearings will be conducted. NAIJ has consulted extensively with recognized scientific experts, including Dr. Ashish Jha, *the Director of the Harvard Global Health Institute* and Dr. Donald Millton, *Professor of Environmental Health at the University of Maryland's School of Public Health*. Our recommendations for court operations are solidly grounded in the science-based advice we have received, including proper mask protocols, limiting the number of people summoned to the court building or court space, social distancing in elevators, courtrooms and waiting areas, enhanced cleaning of high touch areas, and proper ventilation.

Summary of Recommendations Received

As the result of the Stakeholder meeting, a number of areas of mutual interest and concern were developed. They fall into seven broad categories: communication, protocols for closing, safety protocols, enforcement of safety protocols, technology, notice of hearings and filing deadlines, and suggestions "on how to avoid unnecessary in-person hearings." They are summarized below.

(1) Communication Regarding Court Openings and Closures

There was great concern expressed about the lack of reliable forms of communications to notify parties of the closure of any given court location. There seemed to be general agreement that postings on Twitter or EOIR websites was insufficient. Direct notice to registrants on E-Registry and a designated ICE attorney at each court location was suggested. Another suggestion made was that since decisions as to when to resume hearings at particular courts are determined by the actions of the local U.S. Attorney's Office, when it is known that federal courts will not be opening for extended periods of

time, that information should be announced immediately, rather than the current policy of weekly review and only two weeks advance notice of resumption of non-detained hearings in specific locations. This would obviate the need to expend tremendous resources in preparing a case and meeting filings deadlines only to find out that the hearing will no longer proceed as scheduled.

Another suggestion was to resume local EOIR/private bar liaison meetings to apprise the local bar of developments in a more timely manner and to seek input on the unique challenges of the bar in that jurisdiction.

(2) Protocols for Closing

A strong consensus emerged that the lack of transparency regarding the protocols used for determinations regarding opening and closing of courts and the reasons for such closures is highly problematic and not trustworthy. This dovetails with communications problems, because when a court is closed, it is not clear that all possible contacts with a COVID positive person have been notified. It was suggested that more information could be provided without violating individuals privacy rights. A public announcement including a description of the person's assigned duties and the location of workspace or areas utilized by a COVID positive/symptomatic employee or court visitor would greatly assist stakeholders and court employees in making their individual decisions as to whether or when it is safe for them to go to court.

(3) Safety Protocols

There was virtually universal consensus that the most recent scientifically agreed upon protocols should be followed. At present, that requires masks, social distancing in elevators, waiting areas and courtrooms, frequent cleaning of high touch areas, and ensuring low density space usage (*i.e.* following maximum COVID-19 based capacity for buildings, elevators, waiting areas, etc.). More reliance on telephonic and video appearances (and ideally *remote* video appearances from offices and homes) was greatly favored as a way to help preserve social distancing. Attorneys requested judges be informed as to the fact that when it is required that the attorney and respondent, and/or witnesses be present in one location as a precondition of a telephonic hearing, it defeats the ability of these individuals to maintain proper social distance, thus solving the problem for the court, but at their expense.

(4) Enforcement of Safety Protocols

The lack of uniformity of the use of masks was criticized as infringing on the ability of a co-worker or stakeholder to protect themselves. An example was given of one judge in a court who wears a mask in court and another one who does not. Since many dockets

are being covered by different judges without notice, how are the parties to know in advance whether their safety is being protected? How should a legal assistant respond if s/he believes masks should be worn, but her co-workers or supervisors do not? Employees have reported that their workspaces are not cleaned daily, a source of great concern. The clear consensus was that the courts must be accessible to the most vulnerable, and that this can only take place if the strictest safety protocols are reliably followed in a given court. Only EOIR has the authority to require this, and immediate implementation of these protocols was recognized as an absolute necessity.

(5) Technology Needed

Outdated technology and an insufficient number of laptops have impeded EOIR's ability to effectively protect stakeholders during the pandemic and prevented it from utilizing electronic filing as well. Many questioned why Zoom or other commercially available platforms are not being employed at EOIR, even though they are by many other state and federal courts nationwide. The limited access to electronic filings and electronic records has clearly interfered with the effective continuation of operations of the courts while social distancing is required. The use of bridge lines has been problematic and caused many delays. One suggestion was to ask Congress for a supplemental appropriation to buy sufficient technology, software and upgrades. However, the issue with EOIR has not been lack of funds but the ability to utilize the funds appropriately. Another suggestion was to explore the security protocols employed by state courts in order to utilize readily available commercial platforms for remote hearings. There was also consensus that EOIR should continue to permit the pandemic based electronic (email) filing of documents for all courts.

(6) Notice of Hearings and Filing Deadlines

Relatively last-minute notice of newly scheduled hearings or rescheduled hearings were cited as extremely problematic to attorneys' ability to prepare their cases for hearing. If only two weeks notice is provided, it is impossible to comply with the filing deadlines set forth in the Practice Manual or local IJ instructions. Often it is difficult to arrange a meeting with the respondent, let alone obtain and file recently available documents. At the same time, complying with filing deadlines for cases set on the docket long ago, only to find the case has been continued because the court has not yet reopened, is onerous, too. It was suggested that no less than 30 days notice be provided for rescheduled hearings to allow for adequate preparation. If the recommendation that predictable closures are communicated (such as several months before the local federal courts are opening), providing this additional time would not be burdensome. In addition, a standing order that vacates current call ups for documents allowing supporting documentation to be filed 30 days prior to hearings which have already been

set but are likely to be reset due to COVID would be of assistance as well. For those attorneys who have cases which are ready for hearing and are willing to accept shorter notice or would like to have their cases heard, it was suggested that liberal granting of a motion for early hearing would enable the docket to be filled without harming those who are unable to respond that quickly.

A recurrent frustration expressed at the meeting by the parties who appear before the court was the need to file individual motions for telephonic hearings. They recommend that a standing order which remains in effect until a court is fully opened (with no pandemic related restrictions) would be efficient for the court and the parties in alleviating filing and adjudicating repetitive boiler plate motions to waive in person appearances during the pandemic.

(7) Avoiding In Person Hearings

In order to reduce the number of hearings needed, including master calendars, a standing order that written pleadings, with applications, will result in a waiver of appearance for counsel and respondent would be extremely helpful and efficient. Another suggestion was to encourage the parties to reach a stipulation on cases to be terminated for adjudication of adjustment of status application before USCIS. Also, a joint stipulation to submit the matter on the written record (where DHS has no doubts about credibility and counsel for respondent believes the written record adequately demonstrates statutory eligibility and equities meriting the favorable exercise of discretion) should also be considered as a way to proceed and be available via a standing order.

Conclusion

The purpose of summarizing our takeaways from this Stakeholder Town Hall Meeting is to recognize the common interest we all share and steps we can take when we work together during this pandemic to ensure the health and safety of all while providing access to the court. We plan to continue to hold such Town Halls in the future and thank all participants for their candid views and constructive suggestions. Please reach out to NAIJ if we have inadvertently failed to include your perspective or suggestions.

It is our sincere hope that by amplifying our individual voices in a coordinated fashion, the impact of the whole will be greater than the sum of our parts. Stay safe and be well.