



**A Renewed Call for Remote Immigration Court Hearings During the Pandemic  
By The National Association of Immigration Judges (NAIJ)**

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The National Association of Immigration Judges (NAIJ) urges the Executive Office for Immigration Review (EOIR) to authorize the use of video conference remote hearings during the COVID-19 pandemic. A pilot project should be immediately implemented while a significant percentage of the workforce is currently teleworking.

While in-person hearings are the gold standard in ensuring fair and expeditious adjudication of immigration court matters, the COVID-19 pandemic and social distancing requirements require our immigration courts to be flexible and creative in continuing to carry out essential functions. Many federal, state, and city courts nationwide have adopted the use of technology to conduct hearings remotely when they cannot take place in person.

The use of remote hearings will substantially increase the ability for all judges to complete hearings on a daily basis. For example, in a court where only 25-50% of judges can work at one time in court due to social distancing requirements and healthcare concerns, teleworking judges can conduct remote hearings. This would increase case completions and help control the growth of the court's backlog. Court business can continue during this current health crisis and future emergency events while the health, safety, and well-being of judges, staff, and all stakeholders is protected. Thus, a maximum telework remote hearing program will specifically permit judges and all parties to be located outside of the physical court and allow proceedings to be completed during this pandemic *regardless of any stay-at-home orders or interim closures relating to COVID-19.*

## **Solutions**

In order to ensure the health and safety of all concerned, NAIJ advocates that the agency adopt a maximum telework, video conference remote hearing program that would allow judges, court personnel, and the parties to connect remotely from the safety of their telework locations outside of the physical court. Numerous federal, state, and administrative courts around the country have adopted this model, and EOIR has not offered any explanation as to why this model would not work in immigration court. This maximum telework plan is set out below as Option 1.

To the extent that Option 1 is not immediately available, NAIJ proposes in the alternative that EOIR immediately allow all parties to appear in court by televideo, with the judge and court staff still present in the physical court. Although this Option 2 still exposes judges and court staff to increased health risk, it is safer than having the parties appear in court and preserves the ability of the judges, attorneys, the respondent, and witnesses to see each other.

### **A. Option 1: Remote Video Conference Hearings by Teleworking Judges**

Option 1 is to conduct full video conference hearings by teleworking judges. To implement this, EOIR would expand the use of existing video conferencing platforms or adopt readily available additional technology designed to function with the agency's pre-existing hardware. Proceedings conducted via videoconferencing technology will be recorded by the court, except for those hearings that are not required to be recorded, such as a pre-hearing conference or some bond hearings.

Many of the existing platforms, either individually or in combination, provide the needed capabilities for the court, including but not limited to, video connections by multiple users, audio recording/transcription, "break-out" rooms, screen-sharing, and file transfer services.

#### **1. Video Conferencing Technology.**

There are many off-the-shelf technologies that have been adopted for court use across the country. EOIR has already adopted OpenVoice to allow parties to communicate by telephone. Video conferencing is also supported through Microsoft Teams, which likewise is implemented throughout EOIR. Other solutions that are readily available include Cisco Webex, GoToMeeting, and Zoom for Government platforms. Most of these technologies have built-in recording and transcribing functions that can be used in lieu of DAR.

**2. Recording of audio.** DAR-equipped laptops will enable judges to conduct remote hearings meeting both audio and transcription needs. In addition, most video conferencing technologies have built-in recording and transcribing functions that can be used in lieu of DAR.

**3. Use of OpenVoice to conduct master calendar hearings.** Master calendar hearings can be conducted using OpenVoice, an audio-only technology already in active use in the immigration courts. OpenVoice has a built-in recording function which allows audio files to be recorded and saved directly to a user's computer.

**4. Electronic Filing.** In courts where ECAS has been implemented, all teleworking parties will have easy access to the case materials. In locations without ECAS, NAIJ recommends that email electronic filing continue indefinitely during the pandemic. This will ensure that parties working from home without access to printers and copiers can comply with filing deadlines and will provide an opportunity for parties to file materials even when a court is closed. It will also provide judges and court staff access to needed documents when not available in hardcopy. To resolve any concerns about overtaxing the support staff, a legal assistant can save the evidence under the alien registration number, and the judge can review the filings electronically. To the extent that EOIR desires to save money on the cost of printing the paper submissions, the parties can be tasked with bringing a physical copy to the hearing or mailing a copy simultaneously when they email the scanned document and can be required to certify that they have done so before the court reviews the electronic submission.

## **B. Option 2: Limited Video Appearances by Parties**

If it is not feasible to immediately conduct video conference remote hearings by teleworking judges, EOIR should allow represented parties to appear remotely by video for the courts that have scheduled hearings. Currently, in some detained court settings, the government may appear remotely by video through existing technologies, such as Cisco Webex, but the respondent's counsel may not. EOIR should employ videoconferencing technology to enable respondents and counsel to appear via video.

**1. Video Conferencing Technology** - EOIR has already adopted OpenVoice in conjunction with DAR to allow parties to communicate by telephone. Technology already in place in EOIR courtrooms and readily available to private counsel would allow represented parties to appear by video teleconference type equipment in EOIR courtrooms. Video conferencing can be supported through Microsoft Teams, which likewise is implemented throughout EOIR. Other solutions that are readily available include Cisco Webex, Cisco Jabber, GoToMeeting, and Zoom for Government platforms. Most of these technologies have built-in recording and transcribing functions that can be used in lieu of DAR.

## **Examples of Courts using Remote Hearings and Resources**

Numerous federal and state courts swiftly addressed the challenges created by the COVID pandemic by adapting to virtual conference remote hearings and adjudication. Federal agencies and state courts have established guidance for conducting hearings using video technology for remote hearings. Here are a few examples of the guidance materials.

Michigan State Courts [Michigan Trial Courts Virtual Courtroom Standards and Guidelines](#);  
California State Courts [Remote Hearings and Access to Justice During Covid-19 and Beyond](#);  
New Jersey State Courts [Instructions for participants and remote hearings](#)  
New York State Courts [Expansion of virtual remote hearings](#);  
Federal Agency - [Federal Energy Regulatory Commission](#)

## **Conclusion**

The ongoing nature of the pandemic requires that EOIR implement virtual conference remote hearing capability. This option to transfer operations to remote hearing capability should be included in all future EOIR continuity of operations plans. EOIR has the capability to move forward and institute virtual remote hearings by use of technology already in use by EOIR. Implementation allows immigration court business to continue and EOIR to effectively and efficiently operate in times of crisis.

Of course, implementation and adoption of these technological solutions will require a collaborative relationship (*see e.g.*, Article of 18 of the Collective Bargaining Agreement), which we welcome.