

Pacific Standard

HOME > SOCIAL JUSTICE

VIDEO HEARINGS IN IMMIGRATION COURT ARE HARMING IMMIGRANTS' CASES

Critics say the use of video is a flawed design of a system seeking deportations.

STEPHEN FRANKLIN, MIRIAM ANNEBERG & ANKUR SINGH · JUL 2, 2019

This is part of a series published with the Social Justice News Nexus at the Medill School of Journalism at Northwestern University. To read an earlier report see [here](#).

The balding, middle-aged man in an orange prison jumpsuit stared glumly into a video camera from a Midwest jail as his attorney far away at an immigration court hearing in Chicago talked about his 18-year-old client.

But neither Judge Kathryn L. Deangelis, nor Mohammed Hussein's attorney publicly noted the lawyer's wrong description of his client during the hearing on October 17th, a typically busy day in Chicago Immigration Court as detention cases quickly flicked by from video cameras across Midwest jails.

"I got that mixed up," said attorney Brian Seyfried later.

Since 1995, courts have increasingly used videoconferencing as a cost-cutting strategy, despite concerns by the Government Accountability Office, law groups, and legal scholars. Last fiscal year, there were 125,636 video hearings in the nation's immigration courts, an increase of 14.5 percent over the previous year. Visiting clients in the wide sprawl of jails used by Chicago's Immigration Court means hours of precious time lost in travel, attorneys explain, so instead they often connect by telephone and video feed.

As lawyers and legal experts explain, a video hearing can mean a losing battle from the start, especially for poor immigrants with limited English, no lawyer, little access to court documents, and little ability to gather evidence.

"You have a situation where you see someone in a jumpsuit and a little room," says **Mony Ruiz-Velasco**, an attorney and head of PASO, an immigration advocacy group in suburban Chicago. The interpretation provided by the court isn't always the best and immigrants do not understand the significance of the judges' questions, she says: "These things don't add up to fair hearings."

Likewise, **Hena Mansori**, who oversees a number of attorneys who work with detainees in Chicago, has her concerns.

"You may have a situation where the government's attorney and the judge are having a conversation and it is not even translated and ... the person on the other side of the video doesn't know what is happening," says Mansori, head of the Adult Detention Project for the National Immigrant Justice Center in Chicago.

Yet, despite a spate of recent feedback from researchers, law, and government groups alike, the courts continue to use, and in some cases to expand their reliance on, video hearings across the nation. Six months of analysis at Chicago's Immigration Court revealed a system that can sometimes resemble an assembly line of flawed justice.

Video feeds frequently suffer **mechanical malfunctions** that delay hearings, adding to the courts' already clogged calendars; they can make it difficult on translators, who may not understand immigrants' dialects; and they can make cases extremely hard to win for immigrants without attorneys, who often have no idea about United States immigration law, and are forced to make their cases in a few minutes, sitting in prison garb and staring up at a video monitor showing a judge far away.

Advocacy groups and researchers have long criticized the practice of holding video hearings. A 2009 critique of the nation's immigration courts led by a Chicago-based legal advocacy group and volunteer attorneys across the U.S. described the video-hearing process as dehumanizing and creating unfair conditions for immigrants. "The immigrant becomes a blurry image in a corner of a small television screen, rather than a living, breathing human being in the courtroom," the report says. "Videoconferencing can also make an immigrant—isolated in a room (typically in a detention center) looking at a video screen—uncomfortable or confused, which can result in the perception that he or she is being less than fully candid."

In an exhaustive review of court data, published in the *Northwestern Law Review* in 2015, University of California–Los Angeles law professor **Ingrid Eagly** concluded that "televideo should instead be understood as an intentional design element of a rapidly evolving detention-to deportation pipeline."

In June of 2017, the **Government Accountability Office** released a report on its findings on problems with video hearings. In half of the immigration courts visited, judges told GAO investigators that they had changed their view of immigrants' "credibility" when meeting them in person.

"For example, one immigration judge described making the initial assessment to deny the respondent's asylum application during a video hearing in which it was difficult to understand the respondent due to the poor audio quality," one section of the report reads. "However, after holding an in-person hearing with the respondent in which the audio and resulting interpretation challenges were resolved, the judge clarified the facts of the case, and, as a result, decided to grant the respondent asylum."

The GAO provided a list of 11 recommendations for immigration courts to follow, including improving and speeding up their staffing procedures, updating their record keeping to better serve judges and immigrants, and carrying out better record keeping of their video hearings, especially to see how they impact judges' decisions. As of July of 2019, only four of these recommendations has been carried out. Immigration courts have yet to conduct a study on how video hearings impact judges' decisions, a GAO update noted.

An extensive American Bar Association report in March on the nation's immigration courts pointed to lawyers' concerns about the "fundamental fairness" of video hearings and urged the government not to use video hearings for children in detention, who do not have attorneys.

In spite of the criticisms, and the call for limiting the use of video hearings to "procedural issues" by a 2017 federally funded study, the immigration courts have steadily expanded their use of video hearings, viewing them as solutions to backlogged courts nation-wide and a crunch of cases at the southern border.

The courts' expanded use of video hearings recently stirred a legal challenge. This February legal service groups that represent immigrants in New York filed a federal lawsuit, challenging the Varick Street Immigration Court's complete shift to video hearings in response to protests outside of the court. The government had initially claimed that the shift was a temporary measure for security reasons during the protests, but the video proceedings continued after the protests, according to the lawsuit. At the time, the courts had neither tested the video system, nor warned lawyers about the change, the lawsuit claims.

Courtroom justice, particularly in immigration courts, is imperfect, but video detention hearings in the Chicago Immigration Court, witnessed over six months by a team of reporters, exemplify the system's failings.

Video hearings frequently malfunction, removing immigrants from their own hearings. Frustrated by a bad hook-up at one Midwest jail, a judge one day gave up after several tries and decided to call back later that day.

Another day when it suddenly became clear that an immigrant had been transferred to a jail without a video hook-up, the judge asked the attorney if it would be OK to go ahead with the case anyway, without the client present in any form, and the lawyer agreed.

Sometimes people disappear in the system when the video comes calling. "I don't have (case) 020 for you guys. He's in McHenry (County Jail) now. They allegedly moved him there this morning. ... One thing says he is here. One thing says he isn't. Will call where he's housed to find out for sure," said a guard one day last fall.

Even when the connection works, video hearings can serve to obscure an already complicated process. A video hearing for a detainee without an attorney, sitting alone in a jail or prison and looking up at a camera, can race in minutes from the judge deciding whether the immigrant gets out on bond to whether she is deported. And deportation, as some judges and attorneys have described it, can sometimes mean a death sentence back home.

A bond hearing is a chance for an immigrant in prison to make their plea to go free temporarily. And for an immigrant without a lawyer, a bond hearing is a hefty challenge. Just being in prison on a video call sets them back: Out of work, most cannot afford a lawyer, and the chances of finding a pro bono or free lawyer are slim. They also often have to come up with a hefty amount of money.

Day to day, as the video hearings play out, they unreel a blur of faces, and justice that sometimes seems amended.

On November 13th, 2018, Jose Francisco Perez, appearing on a monitor, said that he didn't have a lawyer. That meant, the judge explained, he had to tell the court why deporting him would create an exceptional burden for his two U.S.-born children. He looked away and down from the screen and did not take any notes. The judge set a final hearing on his case for mid-December.*

Later that morning, Miguel Angel Gonzalez, appearing on a monitor, told the judge that he didn't have the "means to get an attorney," didn't know enough English to fill out an asylum application, and was not able to talk with the pro bono lawyer, who visits the jail monthly. "Last time I couldn't write my name on the list because there were so many people," Gonzalez said. The judge set his next hearing for a day in the coming weeks. "If I can complete my application, how do I get to you?" he asked, and the judge told the guard in the room to hand him the form.

He slumped his head on the table in front of him and awkwardly looked up at the screen.

When Enrique Daniel Yumez, case 506, showed up on the monitor, on the morning of November 20th, 2018, the young Honduran, who had crossed the border five months earlier, told Judge Robin Rosche that he thought friends had arranged a lawyer for him. But there wasn't one in the court.

Yet he had a more important issue on his mind, he explained through a translator seated in the Chicago court beside the judge.

"My son is just three years old and I don't know where he is."

"I can't talk with you until you have an attorney," the judge replied. More than two hours later, Yumez appeared again on the monitor, but there was still no attorney. The judge explained that he could speak for himself, but warned that if he did, "you may not get bond."

After listening to an explanation about bond from the judge, Yumez repeated his question about his son. "My son, I haven't heard from him and I've heard that he is ill," he said. Why, the judge asked in response, did his wife let him travel north with a child so young?

"She gave him to me because there is no work and no food," he replied.

He said he had been released with an electric monitoring bracelet at the U.S. border and had moved to Indiana to be with friends. He was arrested by government agents, who "were looking for somebody else and they picked me up." At the time, he was no longer wearing the bracelet, because, he claimed, some strangers on a bus had taken it off him.

Saying she didn't believe his account, the judge denied bond, and scheduled another hearing in a month. Yumez stared up at the screen, and then vanished as case 762 took his place on the monitor. It was 11:44 a.m. Another busy day.

**Except for Mohammed Hussein, all of the names used here were overheard during court sessions. As Immigration Court officials explained, the court dockets could only be reviewed after a FOIA filing, and requests for court documents needed to indicate the individual's case number. The case numbers listed here are not the complete numbers.*

This story was produced as part of a partnership with the Social Justice News Nexus at the Medill School of Journalism at Northwestern University.

