OOD
PM 20-13

Effective: June 11, 2020

To: All of EOIR
From: James R. McHenry III, Director
Date: June 11, 2020

JAMES MCHENRY
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EOIR PRACTICES RELATED TO THE COVID-19 OUTBREAK

PURPOSE:	Updating Practices Related to the COVID-19 Outbreak
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 20-10, *Immigration Court Practices During the Declared National Emergency Concerning the COVID-19 Outbreak* (Mar. 18, 2020); Addendum to PM 20-10 (Mar. 19, 2020).

The COVID-19 outbreak has presented a challenging and evolving operational environment for EOIR. The dynamic nature of the outbreak has also meant that guidance may change rapidly. EOIR has continually reviewed guidance from the Department of Justice (DOJ), the Office of Management and Budget, the Office of Personnel Management, the Centers for Disease Control and Prevention (CDC), and the General Services Administration (GSA) in responding to issues related to COVID-19 and will continue to do so as circumstances change.

Since March 2020, EOIR's critical-infrastructure workforce has been operating in accordance with revised practices related to the outbreak of COVID-19.[1] As most of the country, including the federal government, moves toward restarting activities limited by COVID-19, EOIR, too, is moving toward reengaging its operations that have been postponed, including the resumption of

[1] COVID-19 refers to a novel coronavirus first identified in 2019 in Wuhan, Hubei Province, People's Republic of China that subsequently spread globally. It is also abbreviated SARS-CoV-2 to distinguish it from a previously-identified coronavirus SARS-CoV that causes severe acute respiratory syndrome, or SARS. Severe acute respiratory syndromes are considered communicable diseases of public health significance for purposes of 8 U.S.C. § 1182(a)(1)(A)(i). *See* 42 C.F.R. § 34.2(b)(1) (a communicable disease of public health significance under 8 U.S.C. § 1182(a)(1)(A)(i) includes "[c]ommunicable diseases as listed in a Presidential Executive Order, as provided under Section 361(b) of the Public Health Service Act [42 U.S.C. § 264(b)]"); Executive Order 13674, *Revised List of Quarantinable Communicable Diseases* (July 31, 2014) (amending Executive Order 13295 to specify that "[s]evere acute respiratory syndromes, which are diseases that are associated with fever and signs and symptoms of pneumonia or other respiratory illness, are capable of being transmitted from person to person, and that either are causing, or have the potential to cause, a pandemic, or, upon infection, are highly likely to cause mortality or serious morbidity if not properly controlled" are communicable disease for purposes of Section 361(b) of the Public Health Service Act). Thus, an alien determined to have COVID-19 may be inadmissible pursuant to 8 U.S.C. § 1182(a)(1)(A)(i).

non-detained hearings. To that end, EOIR is updating its guidance regarding practices adopted by its adjudicatory components related to COVID-19. This Policy Memorandum (PM) is effective immediately and supersedes PM 20-10, *Immigration Court Practices During the Declared National Emergency Concerning the COVID-19 Outbreak* (Mar. 18, 2020) and Addendum to PM 20-10 (Mar. 19, 2020).

I. General Practices

A. Building or Facility Access

EOIR operates within a variety of settings across the country, most commonly in federal or leased buildings controlled by the GSA and detention facilities operated by the Department of Homeland Security (DHS). All visitors to any building or facility in which an EOIR operation is located are required to comply with all relevant laws or policies governing access to those buildings or facilities.[2] Individuals who do not comply with any relevant laws or policies may be denied access to or asked to leave the building or facility. Individuals seeking to visit any building or facility in which an EOIR operation is located are encouraged to contact the building or facility in advance to determine any relevant policies or laws related to entry.

B. Visitors[3] to EOIR-Controlled Space

As noted above, EOIR operates within a variety of settings across the country, and the layouts of its space vary considerably by location. Thus, there is no one-size-fits-all plan for resuming operations applicable to every location, and specific measures to mitigate risks posed by COVID-19 may be tailored to the particular settings of each location. Nevertheless, the following general principles serve as baseline guidance as EOIR begins to resume operations.

Consistent with DOJ policy, until further notice, all visitors to EOIR-controlled space are required to wear a face covering except for children under two years of age and individuals with medical conditions that prevent them from wearing a face covering.[4] Visitors without a face covering may be denied access to or asked to leave EOIR space.

All visitors to EOIR-controlled space are also required to observe any applicable social distancing guidelines to the maximum extent practicable. Visitors who fail to observe such guidelines may be denied access to or asked to leave EOIR space.

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[2] In particular, EOIR does not control access to any detention facility in which hearings may be conducted. Individuals seeking to attend hearings in such a facility may be subject to additional restrictions imposed by the facility operator that are not addressed in this PM.

[3] Visitors include all individuals who are not employees or contractors of EOIR. Thus, visitors include, but are not limited to, attorneys and other representatives, respondents, witnesses, DHS personnel, and couriers. Access by visitors to non-public EOIR space (*e.g.* immigration judge chambers) is strictly limited and should not generally occur absent an exigent circumstance or an established business practice (*e.g.* a security walkthrough or mail delivery by the United States Postal Service).

[4] All EOIR employees and contractors continue to be required to comply with any existing DOJ policies regarding the wearing of face coverings.

All visitors to EOIR-controlled space are also required to comply with any applicable signs or instructions from EOIR personnel regarding behavior while in that space. Visitors who fail to do so may be denied access to or asked to leave EOIR space.

Visitors described in one of the categories below should not be allowed into EOIR-controlled space if the triggering event occurred within the preceding 14 days of the attempt to access that space:

- a positive test for COVID-19;
- a diagnosis of COVID-19 by a medical provider;
- the presence of one or more established symptoms of COVID-19;
- a request to self-quarantine by local health authorities or a medical provider related to COVID-19; or
- close contact[5] with someone who has an active positive diagnosis of COVID-19 or who is exhibiting one or more symptoms of COVID-19.

Individuals may be asked questions related to whether they are described in one of these categories and may be denied access to or asked to leave EOIR space, depending on their responses.[6]

Visitors who appear to intentionally enter or seek to enter EOIR space in order to spread COVID-19 or to infect EOIR employees may be referred for further investigation and potential civil or criminal proceedings.

C. Email Filing and PM 20-11, *Filings and Signatures*

Since late March, each of EOIR's three adjudicatory components—the Office of the Chief Immigration Judge (OCIJ), the Board of Immigration Appeals (the Board), and the Office of the Chief Administrative Hearing Officer (OCAHO)—have adopted procedures to allow for certain filings by email, particularly at immigration courts where the EOIR Court & Appeals System (ECAS) has not yet been deployed.[7] Although filing by email places a significant burden on EOIR's immigration court personnel, EOIR could accommodate that burden while non-detained

[5] The CDC use an operational definition of "close contact" as less than six feet for fifteen minutes or more, but the CDC also notes that proximity, the duration of exposure, whether the exposure was to a person with symptoms, and the type of interaction are all important to determining "close contact." *See* Public Health Guidance for Community-Related Exposure, available at https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html (last reviewed June 5, 2020).

[6] A respondent who is denied access to or asked to leave the building, facility, or EOIR space on the day of the respondent's scheduled immigration court hearing should contact his or her representative as soon as possible. If the respondent is unrepresented, the respondent should contact the immigration court as soon as possible.

[7] As of March 2020, ECAS had been deployed to both of EOIR's immigration adjudication centers (IACs) and to the following twelve immigration courts: San Diego, Denver, Baltimore, York, Atlanta-West Peachtree Street, Atlanta-Ted Turner Drive, Aurora, Philadelphia, Otay Mesa, Imperial, Stewart, and El Paso. The nationwide deployment of ECAS was paused in March due to restrictions on government travel due to COVID-19. Once those restrictions are lifted, EOIR is committed to continuing to deploy ECAS nationwide as expeditiously as possible, subject to available resources.

hearings were postponed. With the planned resumption of non-detained hearings, however, EOIR does not have the available staff or resources to continue to print email filings for approximately one million cases.

Accordingly, EOIR will have to modify its use of email filing as non-detained hearings resume. EOIR will no longer accept email filings and will deactivate the email address for filing for an immigration court 60 days after that court has resumed hearing non-detained cases.[8] For immigration courts hearing only detained cases, EOIR will no longer accept email filings and will deactivate the email address for filing for that court 60 days after an immigration court in the same federal judicial district has resumed non-detained hearings.[9] The Board and OCAHO will deactivate their respective email filing systems developed during the COVID-19 outbreak within 60 days of the resumption of non-detained hearings by the Arlington Immigration Court.[10]

In light of these changes, the sections in PM 20-11 that address filing by email will eventually become obsolete. The remainder of PM 20-11 regarding electronic signatures is unaltered by this PM.

D. Updates

Additional guidance may be forthcoming as circumstances warrant. Parties are strongly encouraged to monitor EOIR's operational status website, https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic, for further updates.

II. Immigration Court Practices

Although the COVID-19 outbreak significantly disrupted immigration court operations, much of the guidance developed in response to it remains useful even as EOIR moves to normalize operations. The following policies should be used to guide EOIR's return to normal immigration court operations in the coming months.

A. Authorities

EOIR does not typically provide general guidance or reminders about established law or immigration court procedures because immigration judges and practitioners are already well-versed in the law applicable to immigration proceedings. Nevertheless, following the outbreak of COVID-19, EOIR determined that it may be helpful to remind immigration judges and practitioners of the following well-established authorities which may be utilized for preventative purposes to minimize contact among individuals involved in immigration proceedings.

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[8] Because the dockets of EOIR's two IACs are not fixed in order to ensure maximum operational flexibility, they will no longer accept email filings and will deactivate their filing email addresses 60 days after the last immigration court has resumed non-detained hearings or on October 1, 2020, whichever occurs earlier.

[9] The Oakdale and LaSalle Immigration Courts will no longer accept email filings and will deactivate their email addresses for filing 60 days after the New Orleans Immigration Court resumes hearing non-detained cases. The Otero Immigration Court will no longer accept email filings and will deactivate its email address for filing 60 days after the El Paso Immigration Court resumes hearing non-detained cases.

[10] OCAHO's typical electronic filing procedures are not affected by this PM. *See* https://www.justice.gov/eoir/electronic-filing

- Immigration judges may waive the presence of represented aliens. 8 C.F.R. § 1003.25(a). An alien's representative and the attorney for the Department of Homeland Security (DHS) may also agree to hold a hearing without the presence of the alien. 8 U.S.C. § 1229a(b)(2)(A)(ii).

- Immigration judges may grant a motion for a continuance upon a showing of good cause. 8 C.F.R. § 1003.29.

- Depending upon physical facilities, immigration judges may place reasonable limitations upon the number in attendance at a hearing at any one time with priority being given to the press over the general public. For the purpose of protecting witnesses, parties, or the public interest, immigration judges may limit attendance at a hearing or hold a closed hearing. 8 C.F.R. §§ 1003.27(a) and (b).

- Immigration judges control their courtrooms and may exclude persons on a case-by-case basis, including persons exhibiting signs or symptoms of a potentially communicable condition.

- Immigration judges may issue standing orders, including orders regarding telephonic appearances by representatives, consistent with Policy Memorandum 20-09, *The Immigration Court Practice Manual And Orders* (Feb. 13, 2020).

- Immigration judges may direct that provisions of the Immigration Court Practice Manual (ICPM) are not applicable in particular cases. ICPM, sec. 1.1(b) ("The requirements set forth in this manual are binding on the parties who appear before the Immigration Courts, unless the Immigration Judge directs otherwise in a particular case.").

- Immigration judges may conduct any hearing by video teleconferencing (VTC) where operationally feasible. Immigration judges may conduct individual merits hearings by telephone in removal proceedings if the alien consents after being advised of the right to proceed in person or through VTC. 8 U.S.C. § 1229a(b)(2).

B. Best Practices

EOIR further reiterates the following policies in order to encourage immigration judges to resolve as many cases as practicable without the need for a hearing and, thus, to minimize contact among individuals involved in immigration proceedings.

- Parties are encouraged to resolve cases through written pleadings, stipulations, and joint motions. Such actions may resolve some types of cases without the parties needing to appear physically in court, though the ultimate disposition of any particular case remains committed to the immigration judge in accordance with the law. Joint or stipulated requests for the disposition of a pending case—*e.g.* requests for a stipulated order of removal, a stipulated order of voluntary departure, or a stipulated order granting protection or relief

from removal or joint motions to terminate or dismiss proceedings—shall be adjudicated expeditiously by an immigration judge.

- Scheduling and holding a master calendar hearing solely for the filing of an application by a represented alien and the scheduling of an individual merits hearing on a future date is a disfavored practice. For cases involving represented respondents for whom removability has already been determined, the case is not on a status docket, and the case is not yet scheduled for an individual merits hearing, immigration judges are encouraged to issue a pre-hearing scheduling order establishing a deadline for the filing of any applications for protection or relief from removal in lieu of scheduling a master calendar hearing solely for the purpose of filing that application and scheduling a future individual merits hearing. If an application is not filed within the time set by the immigration judge, the opportunity to file that application or document shall be deemed waived. 8 C.F.R. § 1003.31(c). Upon expiration of the filing deadline, the immigration judge shall either schedule the case for an individual merits hearing or issue an appropriate order (*e.g.* for removal, voluntary departure, or withdrawal of application for admission).

- Scheduling and holding a hearing for a represented respondent on a contested issue of removability which involves solely a pure legal question (*e.g.* whether a respondent's criminal conviction constitutes a conviction for a particular category of aggravated felony) is a disfavored practice. Immigration judges are encouraged to resolve such issues based on briefing from the parties.

- Holding a hearing following the timely filing of a motion to dismiss or a motion to pretermit to which the opposing party has had an opportunity to respond in a case in which the ruling on the motion is dispositive of the outcome of the case is also a disfavored practice. Immigration judges should adjudicate motions in an expeditious manner and are encouraged to resolve cases based on the filings of the parties to the maximum extent practicable in accordance with the law. Immigration judges are encouraged to issue written orders in cases in which a motion to dismiss, motion to terminate, or motion to pretermit has been timely filed and the opposing party has had an opportunity to respond to such motion.

- Hearings amenable to being conducted by telephone or VTC, especially for cases involving detained aliens, should be conducted through those mediums to the maximum extent practicable in accordance with the law.[11] Diffused cases of detained aliens scattered across multiple dockets on multiple dates should continue to be consolidated, as practicable, and heard by VTC to free up additional docket space for other priority cases. In particular,

[11] Like other administrative adjudicatory agencies such as the Social Security Administration and the Department of Veterans Affairs, EOIR has successfully used VTC for years to provide more timely hearings without compromising due process. EOIR has used VTC for hearings for nearly three decades, and it has been shown to be a "proven success." *Jurisdiction and Venue in Removal Proceedings*, 72 *Fed. Reg*. 14494 (Mar. 28, 2007).

reviews of negative credible fear determinations made by DHS may be heard by telephone or by VTC. 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

C. The ICPM

The ICPM will be updated to make any conforming changes with this PM. Any standing orders or local operating policies adopted during the COVID-19 outbreak are not altered *per se* by this PM, but they may be deemed obsolete or in conflict with the ICPM based on changes in this PM. *See* PM 20-09, *The Immigration Court Practice Manual and Orders* (Feb. 13, 2020).

III. Legal Determinations

The COVID-19 outbreak did not alter the law applicable to immigration court proceedings or to the Board, and immigration judges and Board members continue to exercise "independent judgment and discretion" in adjudicating cases. 8 C.F.R. §§ 1003.1(d)(1)(ii) and 1003.10(b). Accordingly, immigration judges and Board members will continue to adjudicate cases in accordance with applicable law, even in instances in which an issue is raised related to COVID-19.[12] Filing deadlines in pending immigration court cases will continue to be set by immigration judges—subject to motions to extend a deadline or to accept untimely evidence—though judges may defer to the Immigration Court Practice Manual (ICPM) or to any applicable standing order or local operating procedure. Motions to continue remain subject to the familiar "good cause" standard as interpreted through relevant case law. Motions to reopen also remain subject to standard requirements established by statute, regulation, and case law. Immigration judges and Board members are reminded, however, that although COVID-19 may be a relevant factor in some cases warranting the granting of a particular motion, it is not talismanic and does not automatically mean that a motion is meritorious, particularly in circumstances where there is a suggestion that it is being used as a cover for purely dilatory tactics.

IV. Conclusion

EOIR remains committed to the health and safety of those working in or having business before the agency. The policies and procedures described in this PM further reflect that commitment while also ensuring continued efficient and fair case processing as EOIR moves towards resuming typical court operations across the country.

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing herein should be construed as mandating a particular outcome in any specific case.

Please contact your supervisor if you have any questions.

[12] Adjudicators within OCAHO will also continue to adjudicate cases in accordance with applicable law, even in instances in which an issue is raised related to COVID-19.