

STANDING ORDER CLE-21-01
CLEVELAND IMMIGRATION COURT

On March 17, 2020, the Federal Government issued a memorandum directing agencies to minimize face-to-face interactions with members of the public, which is posted at <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>. To comply with directives from Federal, State, and County health officials and reduce the spread of COVID- 19, it is hereby ordered that the following procedures shall be implemented immediately in the Cleveland Immigration Court and shall supersede any prior standing orders. This order shall remain effective until rescinded by a superseding order of the Cleveland Immigration Court. This order is made pursuant to Immigration and Nationality Act§ 240(b)(1)-(2) and 8 C.F.R.§§ 1003.10(b), 1003.21(b), 1003.25, 1003.29, 1003.31(c), 1003.40.

On January 13, 2021, General Order No. 2020-08-5 was issued by the Honorable Chief Judge Patricia A. Gaughan which superseded Amended General Order No. 2020-08-4, which was vacated. This order continued the closure of the Carl B. Stokes U.S. Courthouse to the General Public. The General Order requires the use of facemasks or cloth face coverings for all individuals in the courthouse unless otherwise directed by the Court or a courthouse official. Common areas where employees or the public congregate to interact will be closed. Physical distancing will be enforced in other public and common areas.

All parties should continue to monitor the EOIR website at: <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>) for the latest information on court operating status.

**INDIVIDUALS TESTING POSITIVE FOR COVID-19
OR THOSE WITH INFLUENZA OR COVID-19
SYMPTOMS**

Under no circumstances shall any individual experiencing symptoms consistent with Influenza or COVID-19 infection enter the Court, including but not limited to the lobby, filing window, and courtrooms. This same restriction applies to any individuals who have tested positive for COVID-19, unless they have been affirmatively advised by an appropriate medical professional that they are no longer contagious. Individuals may be questioned whether they have any of these symptoms (this includes having a temperature at or in excess of 100.4 degrees or having a temperature in the past 48 hours at or in excess of 100.4 degrees) and may be denied access to or asked to leave the Court space, depending on their responses. If any individual described in this paragraph is unable to attend an upcoming hearing at which his or her presence is required, he or she shall promptly notify the Court. The Court may request appropriate medical documentation as deemed necessary for any party requesting continuance based on health conditions.

UPON ARRIVAL

All persons scheduled before the Cleveland Immigration Court should allow additional time sufficient to clear security, check in with Court staff and arrive in the appropriate courtroom by the scheduled hearing time. In accordance with General Order No. 2020-08-5 a health screening (temperature check and COVID-19 screening questions) may be conducted at the entrance to the courthouse where the Cleveland Immigration Court is located. Individuals will be denied entrance to the courthouse if they have a temperature of 100.4 degrees or higher or respond affirmatively to any COVID-19 screening question. If any counsel or respondent knows or has reasonable grounds to believe that he or she has been exposed to any person who has tested positive for COVID-19 within 14 days of the scheduled hearing, counsel or respondent must immediately notify the Court to determine whether the case should be rescheduled. Respondents denied entrance to the courthouse should contact the Cleveland Immigration Court immediately at (216) 802-1100 to notify the court staff. In order to comply with General Order No. 2020-08-5, only

witnesses whose entry has been approved by the Court in advance of the scheduled hearing will be granted access to the Courthouse. Parties should refrain from bringing non-essential persons to the scheduled individual hearing.

All persons **must** have an appropriate facemask or cloth face covering which adequately covers the wearer's nose and mouth at all times. All persons without an appropriate face covering shall be denied access to or asked to leave the Court space. All persons are also required to comply with any applicable signs or instructions from Court personnel while in the Court and adjacent space.

PUBLIC OBSERVATION OF IMMIGRATION PROCEEDINGS

Members of the public wishing to observe immigration court proceedings should be aware that not all immigration proceedings are open to the public due to confidentiality. Observers must be seated prior to the start of any proceeding and should remain seated throughout the hearing to avoid disruption of the hearing. The Executive Office for Immigration Review has issued a Security Directive regarding electronic devices in space under its jurisdiction. Observers should consult PM 19-10 effective March 20, 2019 for guidance. Further, due to the pandemic the maximum number of persons who may be allowed into any one courtroom is limited for the protection of all those attending a hearing. Each courtroom has the capacity posted. All public observers must be over the age of 18 years. Judges retain the authority to further limit those that may attend any given hearing.

FILING OF MOTIONS, APPLICATIONS, BRIEFS, EVIDENCE, AND OTHER DOCUMENTS FOR DETAINED AND NON DETAINED PROCEEDINGS

Routine Filings: In person filings are being accepted, however parties are encouraged to utilize first class mail or express delivery services. Parties shall file all motions, documents or evidence prior to any scheduled proceedings in accordance with the EOIR Policy Manual. ECAS is now available for filing for cases that have been commenced in ECAS. All cases which have not commenced in ECAS will remain as paper only cases.

Time-Sensitive Filings: All filing deadlines ordered by the Court remain in effect. Unless otherwise ordered by the Court, all filings are due in accordance with the deadlines established in the EOIR Policy Manual, Chapter 3.1(b). Untimely filings are subject to the consequences identified in the EOIR Policy Manual, Chapter 3.1(d).

Amendments to Applications: All changes, edits or updates to any application before the Court must be filed in accordance with the policy manual prior to the hearing date. All modifications must be reviewed with the Respondent in their best language prior to submission to the Court.

Page Limit: For documents relating to country conditions or other reference materials, a maximum of 150 pages total may be submitted. The relevance of each background/country condition document shall be set forth in the table of contents or by citation in the prehearing statement. A party wishing to submit more than 150 pages of such documentation must first establish good cause in a written motion that identifies the documents sought to be submitted, why they are believed to be necessary, and what they show that is not already established by any prior submissions. The U.S. Department of State's most recent Country Report on Human Rights Practices and Report on International Religious Freedom may be submitted, or made part of the record by motion, without counting against this page limit.

Witnesses: In order to comply with General Order No. 2020-08-5, parties must seek approval for any witness for whom a sworn statement or declaration would not be adequate to appear in person or by telephone. Parties must submit an appropriate motion and order with their witness list no later than thirty (30) days in advance of the individual calendar hearing. This list must provide the names of witnesses, method of attendance (in-person or telephone) and a brief summary of the testimony expected to be given. This summary must be more than a generic statement and provide a basis for the Judge to determine relevancy of requested witness. Failure to comply with the above will result in witnesses not being allowed to enter the building.

REQUESTS FOR TELEPHONIC PREHEARING CONFERENCES

Parties are reminded that telephonic prehearing conferences may be requested to narrow issues, obtain stipulations, exchange information, or otherwise simplify and organize the proceeding. 8 C.F.R. § 1003.21(a). Prehearing conferences may be initiated by the Immigration Judge or requested by a party, in writing, to resolve matters without the need for a hearing. Respondents may be excused from prehearing conferences, at the discretion of the Immigration Judge. If either party believes that a matter is appropriately resolved via a pretrial conference that party shall confer with the opposing party and file an appropriate motion with the Court. The Court will then review the record and take action as appropriate.

DETAINED HEARINGS

Detained hearings will be conducted as follows: Attorneys are permitted to appear in person for any scheduled hearing. Any attorney intending to appear telephonically must give notice of their intent to attend by filing a notice to appear telephonically 48 hours in advance of the hearing. Attorneys for the parties must provide a landline phone number at which they may be reached. Attorneys for the respondent must confer with the respondent in advance of the hearing and ensure that the respondent consents to the telephonic appearance.

NON DETAINED

INDIVIDUAL CALENDAR HEARINGS

Pursuant to 8 C.F.R. § 1003.25(c), Counsel and respondent(s) may request approval from the court to appear by telephone at an evidentiary hearing with the consent of the respondent involved after the respondent has been advised of the right to proceed in person or video teleconference. Counsel for the respondent should file a motion thirty 30 days in advance of the scheduled hearing requesting a telephonic evidentiary hearing. Such motion must include a sworn affidavit or declaration from the respondent stating that he or she has been advised of the right to proceed in person or video teleconference and waives that right. Counsel and respondent must be together and they must appear through a landline. The telephone number must be

included in the motion for the telephonic evidentiary hearing. Unless otherwise ordered by the individual immigration judge, the respondent must file any changes, corrections or amendments to all pending applications and or to his or her declaration(s) in accordance with the time limits set by the EOIR Policy Manual in advance of the telephonic evidentiary hearing. Failure to respond when the case is called may result in the conclusion that the respondent has failed to appear.

Parties are encouraged to utilize methods that reduce the number of persons appearing for Individual Hearings. This includes filing sworn written statements in lieu of testimony when appropriate. Parties should refrain from bringing non-essential persons to the scheduled individual hearing. The presiding judge retains the right to exclude non-essential persons from the courtroom.

Motions for witnesses to appear by telephone must be submitted no later than thirty (30) days in advance of the individual calendar hearing. Motions for witnesses to appear telephonically must include a summary of the witness's expected testimony that demonstrates its relevance, materiality, and its necessity.

In all individual calendar hearings wherein the respondent is represented, counsel for the respondent shall submit any stipulations of fact or law that the parties have reached (meaning the parties have agreed on). If applicable, counsel for respondent must submit a brief setting forth any particular social group(s) to which the respondent is a member and which form the basis for any application for relief. The above must be filed with the Court and served on the Department of Homeland Security no later than thirty (30) days prior to the individual calendar hearing.

Parties are encouraged to resolve cases through written pleadings, stipulations and joint motions. The Court may adopt the stipulations of the parties in lieu of, or in addition to, the respondent's oral testimony and rely on such stipulations in reaching a decision.

The Court has introduced WebEx as a means for conducting non-detained hearings beginning December 7, 2020. Any party may request to appear via WebEx. The party must file a motion thirty (30) days in advance of the scheduled hearing date, identifying the persons who will appear by WebEx. The motion must include an email address to which an invitation is to be sent. A motion to appear by WebEx represents that the respondent and his/her counsel have video and audio capability. Open Voice is not compatible with WebEx. When a motion for appearance via WebEx is granted, the Court will issue an invitation to the parties via an automated WebEx process. The invitation will include a unique meeting number (access code) and meeting password for the date and time of the hearing. Parties may distribute the code or password to those persons who have been identified in the motion for the WebEx hearing.

Respondents and all witnesses appearing before the Court via WebEx must be able to show a view of themselves, which includes the room, table, desk or workspace. Parties are reminded that at no time should any person testifying have notes or documents to assist them with their testimony, except when asked to review a document during the hearing. Judges may ask respondent or any witness using WebEx to complete a 360° room pan and desk sweep with their webcam. This is to ensure the area is clear of any unauthorized persons or materials. Parties are further reminded that all persons using WebEx must be in a quiet location. No unauthorized persons should be present during the hearing. The area should be clear of animals or other distractions such as ringing telephones.

Telephonic hearings will remain an option.

NON-DETAINED MASTER CALENDAR HEARINGS

For non-detained cases in which a representative files a Form EOIR-28 at least 15 days before a master calendar hearing, the hearing will be vacated. A scheduling order will be sent to the parties, setting deadlines for the filing of written pleadings, any evidence related to the charges of removability, and any applications for relief or

protection sought by the respondent. The order will also contain a copy of the biometrics notice and instructions, along with the consequences of failing to comply with that notice.

The parties will be given 45 days to submit written pleadings, evidence related to removability, and any applications for relief or protection from removal, though the specific deadline remains committed to the discretion of an Immigration Judge. 8 C.F.R. 1003.31(c). Once an Immigration Judge has received the pleadings, any evidence related to removability, and any applications for relief or protection, the Immigration Judge will then, either issue an order resolving the case, or a hearing notice scheduling the case for an individual hearing on any and all outstanding issues, including contested removability and the merits of any applications for relief or protection from removal.

If the Immigration Judge issues a hearing notice, he or she will also issue another scheduling order setting deadlines for the filing of any motions, briefs, or supporting documents prior to the scheduled hearing. That scheduling order will also instruct DHS to confirm whether the respondent has provided biometrics and other biographical information.

For non-detained cases in which a representative files an EOIR-28 less than 15 days before a master calendar hearing—or does not file it until the master calendar hearing—the hearing will not be vacated, and the representative and the respondent are required to appear at the scheduled hearing. In such cases, unless the case can be resolved at the hearing, the Immigration Judge will issue the scheduling order described above at the hearing, though the Immigration Judge retains discretion to take any appropriate action consistent with the law.

Please note, this Order does not limit or restrict the independent authority of the presiding judge to maintain, control or conduct proceedings before the court (i.e. motions for telephonic appearances by parties and/or restricting the number persons permitted in the courtroom). Further, this order is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or

procedural, that is inconsistent with existing law.

James F. McCarthy, III
Assistant Chief Immigration Judge