

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
TACOMA IMMIGRATION COURT**

**STANDING ORDER 01-20: Establishing Safe Procedures During the COVID-19 National Emergency**

This order establishes filing requirements and courtroom procedures pursuant to Immigration and Nationality Act § 240(b)(1)-(2) and 8 C.F.R. §§ 1003.10(b), 1003.21(b), 1003.31(c), 1003.40. This order is effective immediately and shall remain effective until it is rescinded by a superseding order of the Tacoma Immigration Court.

**FACTUAL FINDINGS**

On Wednesday March 17, 2020, the Federal Government directed agencies to minimize face-to-face interactions with members of the public.<sup>1</sup> To comply with directives from Federal, State, and County health officials and reduce the spread of COVID-19, the following procedures shall be implemented immediately.

**VIDEO CONFERENCE AND TELEPHONIC PROCEEDINGS**

All master calendar, bond, credible and reasonable fear review, and individual calendar hearings shall be conducted by video conference in one of two video conference court rooms, VTC Courtroom 1 (E-145-H) and VTC Courtroom 2 (E-145-G), separate from immigration judges and court staff. INA § 240(b)(2)(A)(iii); 8 C.F.R. § 1003.25(c); *see Vilchez v. Holder*, 682 F.3d 1195, 1199 (9th Cir. 2012). Respondents have a right to proceed in person or through video conference at an evidentiary hearing on the merits. INA § 240(a)(B). If a Respondent objects to conducting an evidentiary hearing where their attorney appears telephonically, Respondent may request a continuance for good cause. 8 C.F.R. §§ 1003.29, 1240.6.

No attorney, interpreter, witness, or member of the public who is subject to the restrictions articulated in Policy Memorandum 20-10, Immigration Court Practices During the Declared National Emergency Concerning the COVID-19 Outbreak (Mar. 19, 2020) (as amended), is subject to an isolation or quarantine order from a government health official or a medical provider, or has had physical contact with anyone within the past fourteen (14) days who was diagnosed with COVID-19 may appear in the Tacoma Immigration Court because the public interest requires that removal proceedings be closed to individuals likely to spread COVID-19. 8 C.F.R. § 1003.27(c). If an individual fails to comply with these reasonable limitations, the court shall comply with guidance from federal, state, and county health authorities and continue the hearing. 8 C.F.R. § 1240.6.

**A. Attorneys and Accredited Representatives**

Attorneys and accredited representatives are strongly encouraged to appear by telephone conference at the phone number contained in the Form EOIR-28, Notice of Entry of Appearance, filed with the court. INA § 240(b)(2)(A)(iv). No prior request for a telephonic hearing is required – the court will call an attorney if one is not physically present in the video conference courtroom at the start of a hearing. Attorneys and accredited representatives may also provide an alternative phone number by calling the Tacoma Immigration Court at least two (2) days prior to a hearing. Attorneys may also appear with Respondent in the video conference courtroom.

---

<sup>1</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, Memorandum for the Heads of Departments and Agencies (Mar. 17, 2020) <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>.

**B. Witnesses, Family Members, and Community Members**

Witnesses, family, and community members may attend a hearing in the same video conference courtroom as Respondent, so long as no more than six (6) people including Respondent, DHS counsel, and a bailiff are present in the courtroom. 8 C.F.R. § 1003.27(a). The court strongly encourages witnesses, family, and community members to provide telephonic testimony or submit letters or written declarations in lieu of appearing at hearings to limit the potential spread of COVID-19.

**C. Members of the Media**

Members of the general public may be asked to leave a hearing to accommodate a member of the media. 8 C.F.R. § 1003.27(a).

**D. Members of *Franco-Gonzales* Class**

Notwithstanding this order, the court will implement safeguards and adopt all procedures necessary to ensure a full and fair hearing for members of the *Franco-Gonzalez v. Holder*, 2014 WL 5475097 (C.D. Cal. 2014) class, including an in-person hearing.

**FILING OF APPLICATIONS, DOCUMENTS, BRIEFS, AND EVIDENCE**

The filing of documents and evidence by first class mail is strongly preferred to reduce the risk of COVID-19 transmission. 8 C.F.R. § 1003.32(a). The court may not consider or give any evidentiary weight to untimely evidence presented at the hearing. *See Taggar v. Holder*, 736 F.3d 866, 889 (9th Cir. 2013). Further, the court may continue a hearing if documents are presented during a hearing, so that the court has an opportunity to review and carefully consider the new evidence. 8 C.F.R. §§ 1003.29, 1240.6.

**PRE-HEARING STATEMENT REQUIREMENT**

In addition to any other pre-hearing statement orders issued by the court, attorneys for the Department of Homeland Security and attorneys for Respondents must submit a written pre-hearing statement pursuant to 8 C.F.R. § 1003.21(b) that contains a statement of the facts and legal issues that each party stipulates to, if any, along with a statement that the parties *actually communicated* in good faith to stipulate to the fullest extent possible. 8 C.F.R. § 1003.21(b).

**MOTION TO ADJUDICATE APPLICATIONS WITHOUT EVIDENTIARY HEARING**

A Respondent may file a “Motion to Adjudicate Applications Without Evidentiary Hearing” with the court, prior to any filing deadlines established by the court, to request that a written decision on the merits be issued based solely on the applications, declarations, and other evidence contained in the record of proceeding. 8 C.F.R. § 1003.37(a). The motion should indicate the position of the Department of Homeland Security, where practicable, and whether Respondent is seeking to apply for voluntary departure under INA § 240B.

**A. Department of Homeland Security Opportunity to Respond**

The Department of Homeland Security has **five (5) calendar days** to respond or object, in writing, to Respondent’s Motion to Adjudicate Applications Without Evidentiary Hearing. 8 C.F.R. § 1003.31(c).

**B. Procedures for Issuance of a Written Decision**

If Respondent has already sworn to the contents of their application under oath before an immigration judge, the court will issue a written decision, in appropriate circumstances, as soon as practicable, automatically reserving both parties' right to appeal to the Board of Immigration Appeals. *See Grava v. INS*, 205 F.3d 1177, 1181 (9th Cir. 2000) ("neither [*Matter of Fefe*, 20 I&N Dec. 116 (BIA 1989)] nor the regulations allow the Board to reject, as a matter of law, testimony limited to an affirmation that the application materials are true."). If Respondent has not yet sworn to the contents of their application for relief, Respondent will be scheduled for a master calendar hearing to swear to the contents of their applications for relief. A "Motion to Adjudicate Applications Without Evidentiary Hearing" may be denied if the court needs to examine Respondent or other witnesses, or for any other reason.

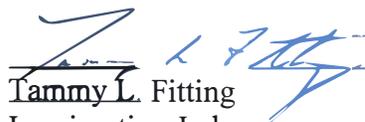
**MOTIONS TO CONTINUE**

While this order is effective, any party may call the Tacoma Immigration Court at (253) 779-6020 to request that a hearing be continued if Respondent's attorney, accredited representative, or witnesses are unable to appear, pursuant to the procedures articulated by this order, because they are exhibiting any symptoms of COVID-19, are subject a quarantine or isolation order of a local, state, or federal official including situations where the attorney cares for a sick or at-risk family member or a minor child or because of guidance or orders issued by the Centers for Disease Control, the Washington Department of Health, or a County Health Officer. 8 C.F.R. § 1003.10(b), 1003.29. Motions to Continue may also be filed in writing.

So ordered.



Charles N. Floyd  
Immigration Judge  
Date: 3-20-2020



Tammy L. Fitting  
Immigration Judge  
Date: 3-20-2020



John Odel  
Immigration Judge  
Date 3-20-2020