



TEXAS A&M UNIVERSITY

School of Law

**“TAMU Law Answers” Webinar Series:**  
**LEGAL ISSUES IN THE AGE OF THE CORONAVIRUS**

**IMMIGRATION PRACTICE AND POLICY DURING THE PANDEMIC**  
**Webinar Series**

**"Changing Technology in Immigration Court: COVID-19 and Beyond"**

**Presented August 4, 2020**

**Panelists:**

- [Daniel Bleiberg](#), Associate, Jones Day, Laredo Project
- [Robert Dunikoski](#), Deputy Chief Counsel for Immigration and Customs Enforcement in Dallas, U.S. Department of Homeland Security
- [Ingrid Eagly](#), Professor of Law, UCLA School of Law
- [Luz Herrera](#), Professor of Law and Associate Dean for Experiential Education, Texas A&M School of Law
- [The Honorable Hugo Martinez](#), Assistance Chief Immigration Judge, Fort Worth Immigration Adjudication Center
- Moderator: [Fatma Marouf](#), Professor and Director of the Immigrant Rights Clinic, Texas A&M University School of Law

*Disclaimer: While some of the panelists are attorneys, they are discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.*

TRANSCRIPT for <https://youtu.be/PGX5f96w9tk>:

- Hi, and welcome to the TAMU Law Answers Webinar Series on Legal Issues in the Age of Coronavirus. Today's webinar is on "The changing role of technology in immigration court, COVID-19 and beyond." This is part of our "Immigration Practice and Policy during the Pandemic" series. And it's the last one in that series.

You can find more information as well as recordings of prior webinars on [TAMULawAnswers.info](http://TAMULawAnswers.info). A general disclaimer-- while the panelists here are all attorneys, we'll be talking about the law generally. So nothing in this webinar should be construed as legal advice.

We have several wonderful speakers today. We have Daniel Bleiberg is an associate with Jones Day, dedicated to the Laredo Project; Robert Dunikoski, deputy chief counsel for Immigration and Customs Enforcement in Dallas, US Department of Homeland Security; Ingrid Eagly, who is a professor of law at UCLA; Luz Herrera, who is a professor of law and the associate dean for experiential education at Texas A&M School of Law; and the Honorable Hugo Martinez, who is assistant chief immigration judge with the Fort Worth Immigration Adjudication Center.

And I'll be moderating. My name is Fatma Marouf. And I'm a professor of law and director of the Immigrant Rights Clinic at Texas A&M. So we're going to jump in and get started. I'm going to turn it over first to Rob to give us a general overview of the technology being used in immigration court and how we got to where we are today.

- Good morning and good afternoon. It's a good opportunity to be a part of this distinguished panel. I appreciate the invite. I just wanted to start off this session by just rewinding 15 years ago. What was it like to be a practitioner in immigration court?

I mean, 15 years ago, you would walk into the court. Typically, the government attorney would lug a box of files. And that would be the information they had on the case. There would be no systems access for that government attorney. Likewise, in the private bar, they would not have access to any of their systems.

The recordings were done on this old tape system, which was real similar to what you would have in a Walkman. Occasionally, just about every hearing, the tapes would start beeping. And the judge would have to take out-- switch tapes. And then sometimes the tapes would actually unwind, and you'd be rolling them up with a pencil. This was the state of things back then.

And all the filings with the private bar-- they were all done in paper. OK, so fast forward to where we're at today. Where are we at today? Well, thankfully that tape system is gone. The judges now have a digital audio recording system that they can use. The government attorneys now have access across the country to their system.

So they can get into their case management system, but also the government databases to where they can provide the court and the private bar with more information on what's going on with the people's-- with cases. You also have the filing situation has changed.

DHS has now rolled out a system we call eService, which is a way for the private bar and for respondents to serve the government electronically where no paper is created. CIS-- Citizenship and Immigration Services, actually has a similar system where certain applications can now be filed digitally. There's no paper. An example is a N-400 or N-600, I-130s and I-539s.

These are all things that people can now file electronically. So really, while I don't think the technology is-- obviously, it's a work in progress. It really has evolved quite significantly in just a few years. And right now, I think what you're seeing at EOIR, you're seeing it at DHS. You're seeing an increased adoption of technologies across the immigration courts. And so I think it is starting to lead to efficiencies.

- That's great. And I'm going to open this next question up to everyone who wants to answer. Well, let's talk specifically about some of the technological changes that have happened as a result of COVID-19 and how that's impacted your practice.

So some of the things are the email filing that's been recently created, telephonic appearances by counsel on both sides, and I believe an extension of the use of remote adjudication. Does anyone want to talk about how email filing has impacted your ability? I guess this would be mostly for respondent's counsel, Daniel, you and for DHS and then also, I think, for EOIR.

- Yeah. I mean, it's made a considerable difference for us. It is obviously much, much easier for us to file electronically than by paper. And the filings in immigration court are often quite voluminous. Although, there's streamline than some.

But avoiding the expense and logistical burden of shipping a couple hundred pages worth of materials to immigration court, I think, has been a considerable benefit to us and I would hope has made the filing process somewhat less burdensome for the court as well. So just that alone has been a significant benefit to us.

And a lot of immigration practitioners are local to where they are practicing. We are located in Laredo and most of our clients are appearing before San Antonio immigration judges. And so it's more burdensome for us and for counsel who are appearing in remote immigration courts than for others who are conveniently located to the immigration court.

- Great. What about from the DHS perspective or the court's perspective?

- Sure. Just from DHS--

- Has this been an improvement?

- --we love it. I mean, it's fantastic. Right now, DHS-- almost every piece of paper that comes into DHS gets digitized. And so having it come in where it's not even on paper, it's already digital. It's fantastic. We can save it to our case management system. It also allows our attorneys during this pandemic-- a lot of us have been working in a remote capacity. And so it keeps us from having to come into the office and keeps our people safe. So it's been fantastic to have the email boxes.

- Morning and good afternoon. And thank you to TAMU Law for the opportunity to address on the topic. That's really important to have technology in the courtroom. From the court's point of view, the going paperless route has been a significant game changer and one which has been welcomed, the fact that as Mr. Bleiberg addressed, that in immigration court, we do have voluminous filings.

And now, going paperless has helped us with the being able to not only deal with the filings in a more efficient manner, but also in being able to keep track of all of the information that's being filed in an efficient manner, which it's been something that has been real positive for the court.

- Great. And what about telephonic appearances by counsel? I'm sure there are pros and cons of this. What are your perspectives on whether that's been a positive change or a negative change?

- From the court's point of [AUDIO OUT].

- I think we've lost sound. I think you're muted, Judge Martinez.

- Sorry.

- That's all right.

- As a background, Fort Worth is an adjudication center. And we are handling all the merits cases from all over the United States, specifically in South Texas and when the MPP program was active. And we do have a lot of telephonic appearances.

And I think that especially right now in the time of COVID, being able to have participants appear telephonically has been able to keep the courts running, has been able to keep respondents from being able to have their cases heard and being able to keep the participants, the attorneys safe and court staff safe as well as the respondents safe as a result of this pandemic.

- And for those of you representing-- I guess, Daniel, just to single you out. But as somebody representing respondents, what's it like to have to appear or to be able to appear telephonically, understanding that this is a safety issue at this point? But are there challenges associated with that as well?

- Yeah. And I'll caveat this by saying that MPP hearings have not been going forward. And so we have not been proceeding telephonically, but have clients in the non-detained context where telephonic appearances has been an option. And we, I think, recognize the value of being able to appear telephonically, but have concerns about the effect of that separation between counsel and respondent.

And I'm just aware that as an initial matter, it's psychologically fortifying for the respondent to be able to see their attorney present, and that there's a lot of comfort in having the attorney visible, if not physically present, with the respondent. And getting to a very practical level, a number of immigration courts-- I think your work in Salt Lake City are among them-- have standing orders that address telephonic appearance.

And they provide that parties are hearing telephonically, are waiving the right to object to the admissibility of documents that are introduced at the hearing, because they're unable to examine them. And so that is a fairly significant waiver and introduces some complicated ethical questions where a respondent might be able to appear in person, but their counsel cannot.

And so what does a counsel need to explain to a respondent where they need to avail themselves of a telephonic appearance? So it's absolutely a useful tool. And I think particularly now where it's really important not to keep people at a distance, there's obviously enormous utility for it. But we have those concerns about relative limitation.

- Yeah, I would just jump in. I would agree with everything that's been said about the usefulness of telephonic appearances and the necessity at this particular moment. I think it's important to also look-- so far, we've talked about the important ways that a telephone appearance can impact the process of the court hearing itself and what's different about the court hearing when counsel or parties aren't present in the court hearing.

But as to the respondent, it also affects how the respondent interacts outside of the court hearing. So, yes, they can't talk to their attorney during the court hearing. And that can be crucial. I've sat in courts around the country doing court observations and seeing attorneys appear by telephone. And the judge will ask questions maybe in a bond hearing about the age of siblings or children.

And if the counsel doesn't have the answer to the question in that moment, they can't turn over and ask the client. But after the hearing, the hearings are usually used at the time where counsel will meet with the client in person after that hearing to tell them what happened, before that hearing to help them prepare.

And so when those appearances are moved to telephone, those in-person meetings for detained clients either don't happen or require an additional visit. And so that's just another concern to raise in terms of how it's really shaping respondents' experiences with the process.

- I think it's important to point out that, at least from my experience and as a judge, I've appeared via VTC to several immigration courts and detention facilities, is that the option to appear telephonically from my experience has been a voluntary option.

That is if I ever have a respondent's counsel say, judge, I really want to appear in person, I have never had a situation where he or she has been prevented from doing so. My experience has been that it is the counsel who has preferred to appear telephonically and has not have been a requirement that has been imposed on them by the courts if you're telephonically. Or rather, counsel would rather appear telephonically from the comfort or the safety of their office for obvious reasons.

And in the past, I can think of two occasions where I had an attorney say, I would rather appear in person. And we've made it possible for that person to be there in person. And I agree or echo what Professor Eagly is saying, that there are some situations where you're going to have a respondent who's going to want to have their attorney there present for them.

And the telephonic issue isn't a issue that's going to prevent the attorney from being present. But rather, it's just another option is the way my experience has been for the attorney to be able to be present and still be safe in these times of this pandemic.

- Yeah. And, Rob, do you want to chime in a little bit about what it's been like for DHS, which has also been appearing telephonically, I think, pretty much across the board at least here in Dallas?

- Yeah. Sure. I mean, it's been great from this perspective of we've been able to keep the immigration courts operating on the detained side, so we very much appreciate that benefit. We appreciate EOIR's issuance of the standing orders and the ability to have those things in place to

where we can keep things going. But that said, it's not a perfect solution. I think any litigator knows that when you're in a courtroom, a lot of times there's the in-person interaction.

Typically in a DHS context, there's always that moment before the hearing when the parties are there, before the judge is there. And the parties are able to talk about the issues, maybe narrow the issues, things like that. There's always those things that happen. So, no, it's not perfect. Another big challenge-- anybody who's been on a conference call knows that it's always awkward to interject, right?

You get that same dynamic with the judge. Sometimes the judge is going. And in the past, we might have stood up to get the judge's attention or maybe just signal to get the judge's attention. You lose that telephonically. So I think both sides are impacted by those issues. So it's not perfect, but I do think it's been very, very beneficial to DHS and the system to have this option during this time.

- I want to talk more about remote adjudication. But before we get to that, we've gotten some questions about e-filing that I thought we would cover-- or I guess I should say email filing about the current situation right now with what's allowed. So a few questions have come in about standing orders issued by courts limiting the exhibit page length or the ability to object to evidence in the record.

And I guess a couple of them are about the limits on exhibits. I think here, you have to submit 50 pages at a time. It's the maximum amount-- PDF size. Does this in any way impact the ability to submit evidence? And what's it like on maybe the courts' end in terms of receiving exhibits in multiple parts or versus, say, a very large exhibit?

And also, another question. You can just answer with whatever you want. But this one has come up also in the written questions which is, when will we be able to submit video as evidence as the form of technology? And if you want, we can come back to that one later.

So maybe let's start with the restrictions on exhibit size and format. Anyone want to address that? I know I've run into issues with this one myself where exhibits were too large. And we basically had to divide them up into many pieces and submit them. Far as I know, they got in. But it does require reading the standing orders carefully.

In terms of not having the ability to object to evidence, I think the standing orders that I've seen say based on your not being physically present. So you can't file an objection based on the fact that you weren't able to look at the evidence in person. But I don't think there's a standing order that doesn't allow you to object to evidence.

- And that's my understanding as well, that those standing orders go in reference to-- if you want to appear telephonically, then you cannot say later that, I'm going to object to that, because I wasn't physically present there for it. You have either choose you want to appear telephonically. Or how do you want to be able to admit evidence? But I don't think there's any-- that I know of any standing order that prevents either party from objecting merely because of some situation like appearing telephonically.

- Right. I think that Newark says that you waive objection based on the inability to examine the document if you're appearing telephonically. And so you cannot object based on your inability to waive that objection. And that may not be the standard provision, but is at least present in Newark [INAUDIBLE].

- I would say in reference to one party filing evidence today of a hearing in reference-- the day of the merits hearing where both parties are appearing telephonically is what we've been able to do is, for example, respondent's counsel wants to file evidence the day of. I'll ask her to email it to DHS counsel and to the court so that they are able to examine it before we move forward on the evidence.

There are some solutions there. You have to be creative during this time of appearing telephonically and not having the parties present. And so that's been one of the ways that I've come up with to try to have the opposing parties. To give the opposing party the ability to examine the evidence is to have the party admitting the evidence to email it to everyone so that everyone will have the opportunity to read it before it's admitted.

- Another question related to what we have been talking about in terms of telephonic appearances for counsel is, why can't we use Zoom in court? I would say more generally, is there a way for counsel to also appear by video instead of by phone, which would at least give a little bit more of a personal interaction or the ability for counsel to see the respondents, see the judge's expression, participate more fully in the proceedings?

I don't know if the issue is around Zoom's technology itself. Or it doesn't have to be Zoom. But is there any movement towards getting, I guess, video appearance by counsel that you know of? I don't know. Rob, have you heard anything about this or Judge Martinez? Or could be we don't--

- I've personally heard of a movement to provide counsel, whether it's DHS counsel or private bar counsel the ability to appear via Zoom. I know that in the last few years, EOIR and the court system has invested a lot of time and effort into creating the video teleconference system that we currently have. And then, of course, the COVID issue came up.

But I haven't heard of anybody creating a system where counsel can appear via Zoom. Right now, what we do have is telephonic appearances. Or again, if you want to appear in person, you're more than welcome to appear in person, assuming that you abide by the rules and PPE regulations that the facility at the court house may have. There's nothing to prevent you, as far as I know, to being able to appear in person.

- So just from the--

- No, go ahead.

- Oh, I was just going to say from the DHS perspective, DHS is investing in web cameras and the software needed for our attorneys to appear virtually via the VTC system. And you're starting to see that in certain jurisdictions now, where that's happening more and more.

And a lot of that is a function of some of our resource issues that we have. We have been-- the last couple of years, the immigration courts have grown significantly. Unfortunately, DHS has not been appropriated at a level that's allowed us to grow in tandem with the EOIR.

At the start of this fiscal year, we had about 500 attorneys short in terms of our number. So because of that, we need a way to marshal our resources and to have our attorneys appear in courts where they're needed to appear. And so increasingly, the answer from our side is going to be a VTC technologies to allow us to do that. So there is that that's happening on the DHS side.

- Would there be any concerns around parity if DHS were able to appear by video and respondents' counsel was not-- or did not have a way of doing that?

- Yeah. I mean, certainly, I can see that. I think that-- I know the EOIR has this bridge technology that they use. And that might be an option to where if there's a standardized platform that a private bar could get again into that way. Obviously, in the post-COVID world, there's the courtroom appearances.

And I think that the model might be something along the lines of the judge might appear virtually. The prosecutor might appear virtually. And the parties and everybody could be there in the courtroom. So I think it'd be interesting to see where this goes in the post-pandemic world, but I can definitely-- I get that parity concern.

- Yeah, it seems like this might be a next step in technology in terms of the video appearances. So I want to talk a little bit also about remote adjudication. Luckily, we have Judge Martinez with us who does right now exclusively remote adjudication. And can you give us a little bit of an overview about how that works, where the party is located? As a judge, what's it like to do this? How do you communicate with everyone?

- Well, as a background, most hearings are conducted in the following manner. The judge-- she will be located in Fort Worth, will appear via VTC, through either what I reference as a historically regular immigration courtroom or a detention center.

And the judge is appearing VTC to the respondent who again is located in the immigration courtroom or detention center along with the interpreter. And the party's private bar counsel appears telephonically. Or if they choose to, they can appear in person.

Governing counsel is appearing 100% via telephone. So what ends up about this scenario for the judge is that we have two parties appearing telephonically. You're appearing via video to the respondent who is at a remote location with the interpreter.

So that's the background of how most of the hearings occur. And it does present some challenges. But thus far, they have been challenges that have had relatively simple solutions. And I think that if the parties show up prepared and prepare ahead of time, they usually can tend to go smooth.

The technology is of the nature where the audio is good quality. The videos have excellent quality. I would argue that the video and audio system that is being used in the courtroom is



better quality than Zoom, for all the use of Zoom. But it is just a clear video, clear audio. The telephone calls are clear, haven't any major issues.

Do phone calls sometimes drop? Yes. We pick up the phone, and we make the phone call again. The VTC images are sometimes lost. My experience has been not often, but it can happen. But you adjust for those situations. And if the parties show up prepared, I don't see any major impediments into conducting the hearings in using this format.

- OK. And what advice would you give to attorneys preparing for a remote case? Is there anything special that they should do or any special warnings or anything?

- Actually, it would be the advice that I would give an attorney preparing for any case, whether it's remote or not remote, which is be prepared. Follow the deadlines that the judge gives, file your evidence in a timely manner. Someone asked the question of when we'll be able to introduce video evidence. You can do it now if you prepare, which is contact the court. Tell the court that you have a merits hearing coming up and say, I have a video I want to introduce.

What would be the best format for me to introduce this video? And if you do it in a timely manner, we can usually address all of these issues. The issues that come up is when counsel shows up the day of the merits hearing and he or she is not prepared. And they have witnesses and/or evidence that they're trying to merit at the last minute.

It creates an issue for a remote adjudication center that arguably creates an issue for any court, whether you're remote or in person when you're unprepared. So my advice would be the advice I would give an attorney in any court, which is don't miss the deadlines that are given to you by the court, prepare ahead of time, talk to your client ahead of time, prepare them for the hearing, meet with them ahead of time, present your evidence in a timely manner and usually things will run smoothly.

- Great. Thank you. What about credibility determinations? Do you feel there's a difference in making those remotely versus person?

- So, again, to reference the quality of the VTC video, the video is of high quality. From the judges and from the judge's bench, I have the ability to zoom in and zoom out on individuals, witnesses, or participants. And I have the ability to get a firsthand view of the individual as they testify.

That being said, me, personally, don't take a lot of stock into physical manifestations of witnesses as an issue that I look at in determining credibility. First and foremost, I think anybody who testifies in any scenario is nervous, especially a respondent who realizes that the hearing may result in the removal from the United States. So they're going to be very nervous already.

But also in immigration court, we have a very unique situation that other courts don't have. And that is most of, not all, of the respondents are obviously going to be foreign nationals who came from the United States, from a myriad of different nationalities, and religions, and backgrounds, and cultures that are going to be different from the American culture.

So what we're usually taught in the United States to look for as to determining someone's credibility-- like for example, the ability of the individual to make eye contact, et cetera, et cetera, may not be taught in other cultures. I know in some cultures that when you're addressing someone about a position, here they're taught not to make eye contact.

So you shouldn't take that into consideration. Because you may not be as familiar with the individual's background to be able to say, well, when he or she testified, they appeared nervous, or they didn't make eye contact. Therefore, I think they're not being credible. I personally don't do that. I rely mostly on the consistency of statements to make credibility determinations.

- OK, great. And so do you think it affects your judgment in any way? Or how do you decide cases in any way to be remote persons, in person?

- I don't. Because again, the parties still have the exact same ability to present evidence that they would be able to present if we were in person. The parties have the exact same ability to make whatever argument they may wish to make as we would have if they would have been in person. And I just don't feel that, at least from the judge's point of view, that the remote VTC affects my ability to decide a case.

There are other factors that definitely need to be taken into consideration as some of the other panelists may address in reference to being able to represent someone via remotely or how they're impacted in reference to their testimony. But I think from a judge's point of view and from a due process issue, I don't see any impediments with being able to hold a hearing via VTC that would come up simply because they're not in person.

- OK, great. Thank you so much. Ingrid, I'd like to turn to you, because you've done some empirical research on remote adjudication. And can you tell us a little bit about what you found?

- Yeah, I'm happy to talk about that. And I'm glad I'm speaking after Judge Martinez's comments, because I think he gave a really helpful overview of how videoconferencing is being used in immigration courts. It actually began in the early 1990s. It began as an experiment in the context of cases in the Institutional Hearing Program, which was a program that began to adjudicate cases of individuals who were held in Bureau of Prisons facilities.

It began in Chicago to link judges sitting in Chicago with people who were held in a Bureau of Prisons facility in Kentucky. Since then it's expanded, but really expanded almost exclusively in the context of detained hearings with MPP being part of a-- considered detained by the EOIR.

One of the really big questions after 1996 when it turned from an experiment into part of the immigration law where individuals could either be assigned to video or to not video and no consent was required by the respondent-- one of the big questions is what you're already getting to. And that is, could using remote adjudication by video conferencing and mandating it if it's assigned, change outcomes in some way?

So that was the question that I set out to study. And I did court observations around the country, a number of interviews with participants in the process and then also examined the EOIR court data. And looking at the data, I found some pretty interesting results.

And that is individuals who have their cases adjudicated by videoconferencing in this national experiment where people are being randomly assigned are more likely to be deported than people who remain detained in their entire case and have their case heard in the traditional in-person courtroom setting. But the question is why.

And I found that it was associated not with judges judging more harshly when they ruled on an application for relief over the video setting judge. There was no statistically significant difference in ruling on those applications for really-- if you were just as likely to have an application granted in the video setting as in the in-person setting.

But paradoxically, those who were assigned to the video setting were less likely to obtain a lawyer. They were less likely to seek voluntary departure. And they were less likely to seek any form of relief. As a result, as we know, people are less likely to get a lawyer and less likely to seek relief. They have fewer chances and opportunities to seek relief and fewer chances to do so with counsel. And therefore, they were more likely to be deported.

So I think this result really says a lot about maybe beyond the courtroom setting, what's happening, and how the experience of being placed in the video setting can impact whether someone actually finds counsel, and also whether they believe that the court process is a fair one in which they would remain detained in order to seek relief.

- And can you just give us some background on what percentage of respondents have counsel, since you've done some research on that as well in detained and non-detained?

- Well, in the detained context, very few have counsel. I did a study with Steven Shafer. And only about 14% nationally of people who were in detention had counsel. So there's a lot of problems with accessing counsel from detention. There's the fact that many of the detention locations, whether they're video or whether they're in person, are located far away from urban centers.

That's not always the case. But it's more likely to be the case when cases are heard in a detained setting. And also, I found that interviewing immigration attorneys that taking detained cases can pose some problems, that it can be more time consuming to visit people in detention. It can also be hard to incorporate a detained docket together with a non-detained docket of cases, given the different speeds at which those cases are heard and the locations.

A lot of lawyers that I spoke with found it difficult to continue being a lawyer in both settings. And over time, we're moving more to non-detained cases or handling a bond hearing and then just doing all their cases non-detained. So that leaves a lot of people who are unable to find counsel. And of course, the affordability is a big issue, too.

- Do you think there's anything that can be done to help respondents feel more engaged to make them more likely to get an attorney and file an application or seek relief?

- Well, I think that it's important to examine what a court hearing is like from the respondent's perspective. I sat in a lot of these court hearings together with the respondent. I sat in them in converted closets that were serving as the detained location, in cafeteria rooms, in some rooms

that looked more like courtrooms. Just a whole variety of spaces in which respondents would have their cases heard.

There was no real consistency in terms of how those proceedings went forward from their perspective. But there were some significant challenges. For example, sometimes what they saw on the video screen was unintelligible. It was on a small TV screen or far away from the respondent. Or there was multiple people speaking, and they couldn't see any of their faces.

So they couldn't see the lawyer. They couldn't see the DHS counsel. Sometimes you couldn't see the judge, because the judge's face was behind the judge's computer. That made it very difficult. I had difficulty, for example, even discerning who was speaking and oftentimes what they were saying.

When you add an interpreter who may also be in a remote location, maybe over telephone or maybe in the courtroom, particularly if it's simultaneous translation interpretation, which many courts are moving to, it becomes extremely difficult to hear from the remote location.

So I think paying attention not just to what's happening in the physical courtroom, but also what's happening in the remote location. Some of the remote locations didn't allow respondent's counsel to enter. One actually didn't even allow me as a researcher to enter.

There's also issues about access to family and loved ones who come to court to support someone. I think that provides an important motivation, that connection with the outside world beyond the attorney. And in remote locations, respondents' families cannot attend.

They're often invited to attend in the remote courtroom, but not in the prison or jail or detention facility where the person is held. Often it's not possible in these physical locations where the respondents' court is held. So I think there needs to be a lot of thinking about what it's like from the respondents' perspective to participate in the court process.

- Thank you so much. A question that we got about remote adjudication is about the ability to negotiate, which is something I think, Rob, maybe you had mentioned earlier. Is there anything we can do to facilitate that in the remote context where-- is there any way to have an opportunity for DHS counsel to respond with counsel to talk about the issues, maybe narrow them, or negotiate a bond, or something like that when we're not in person? Does anyone have any--

- I saw that question. And it was interesting to me. Because I thought to myself immediately, well, what prevents you from picking up the phone and calling opposing counsel and saying, I need to talk to you about the case that we have in a few weeks, and here's the issue that I want to address? Which I think that all parties should always be doing.

I know that especially in the immigration context, it's difficult, because both sides of the bar have a lot of cases. The government has a lot of cases to deal with. And the private bar has a lot of cases to deal with. So it's sometimes difficult to make the time that's necessary to contact the opposing party.

But I think it's important in some situations to-- a bond hearing to contact the government and say, I have a client who-- we have a bond hearing on Friday. And here's the issue. What is your position? So that when they do come into court, the parties-- they can tell the judge, we've discussed this beforehand. Here's the issue.

Maybe the issue is flight risk because the respondent has this arrest. I've already given the police report to government counsel or vice versa. And we've come up with the decision that the bond amount in X amount is appropriate in this case. I don't see why remote adjudication should would prevent parties from still being able to contact each other via telephone.

- Yeah, I think from a respondent's perspective or as somebody who's represented respondents, getting a call back from DHS can be difficult, because they do have so many cases. One of the great things that has happened during this is also just getting the email addresses, I think, for the trial attorneys.

I think that's made it a lot easier to communicate. Because I think for all of us, it's easier often to respond to an email with what you need than to go through voice messages and get calls back. So I don't know, that might be one positive thing that could facilitate negotiation of that, continued going forward. I don't know. DHS-- Rob, do you want to say anything from DHS's perspective about the ability to negotiate or how far--

- Yeah, sure. Sure. I mean, I appreciate the recognition of our resource constraints. And it really is the reality of a DHS attorney is you're in court most days of the week. It's very similar to an immigration judge. And so that can make it difficult to have those phone conversations and things like that.

But what we've done in Dallas to try to alleviate this-- we regularly work with the private bar to get our schedule out there. So in other words, we set up schedule to the immigration court and also to the private-- the bar. And so they can find out ahead of time who has the case.

And then we've also, for a long time now, published our phone numbers and our emails. We give that also to the private bar. So I think an email is a great way to do it. Because it may be that it's 7:45 in the morning before the 8:30 hearing. The DHS attorney finally has time to see that. But I think it does help to see it. And I think that that's probably a really good practice.

And the phone call thing is a great point, too, Judge Martinez. I think that that doesn't hurt as well, especially if it's a complicated case, if there's significant issues. Maybe it's coordinating the phone call ahead of time via an email, but trying to set up a time to talk as well I think would be fantastic, especially right now when we're virtual.

I mean, a lot of these negotiations used to happen in the courtroom ahead of time. And that has been taken off the table right now. So I think private bar has to get creative like we all have been saying and find new ways to make that happen.

- OK, so I want to turn to Luz, maybe to talk a little bit about, is there a way here for technology to be used to maybe increase access to counsel, which is one of the issues that Ingrid mentioned, only 14% of detainees nationwide having access to counsel.

- I mean, I think there is. But it would require not just private attorneys willing to take more cases on. But it would also require, I think, the facilitation of information from the government side, right? Because there are a number of-- there's a lot of information.

And I'm not an immigration practitioner. Just for full disclosure, I come to this from really understanding the delivery of civil legal services in the United States and have studied what courts have done in other contexts-- family law in particular, but small claims and other civil areas.

Really, you want to be able to make as much information available to both parties for it to be an equitable-- for a respondent to have an opportunity to engage. And the last discussion was interesting about the respondent's attorney not picking up the phone. And I'm thinking, I wonder if they didn't have to chase all the paperwork, if they would have more time to pick up the phone and negotiate. I don't know. I'm not a practitioner.

But I mean, I think it seems like there are a number of things, including having a complete copy of the A file. That might be very helpful, and that technology could absolutely facilitate that, because it's already being done at the federal level through PACER, right?

And we have, I understand, some rollout of a quasi-PACER-like platform, but it's still limited. It's still quite limited. And so we're spending a lot of money, putting a lot of federal money into private parties to develop huge detention centers.

And I think we could probably invest a little portion of that money or at least require some of these contracts to permit some technology built in into what they're doing that would allow-- that facilitate some rooms, that would permit respondents to have confidential conversations with their attorneys when they are being represented remotely. I think that would facilitate the attorney-client relationship.

It might get more attorneys willing to take a case in one of the far out detention centers where a lot of these things are being held. So I do think technology is very-- can be really helpful. But it has to be a little bit more equitable than it is now. It does require an infusion of funds.

And I do think it has to come from the government's side, because that's who controls the information. We have had the private sector invest quite a bit in trying to facilitate immigration for most-- for other respondents in other types of cases.

So you have a lot of [INAUDIBLE] in the area of naturalization for folks who are applying for DACA or were applying for DACA, TPS, and maybe not as much as many platforms for applications for UNT visas. But we have a lot of technology that the private sector has invested in to try, because they've identified this as a need, right?

The sector and in the civil legal services world-- we talk about having a latent market of legal services. Well, the immigrant community is a latent market for legal services, except that there's a vast majority of them that come from very impoverished backgrounds and don't have a whole lot of money. And it's also not, in my opinion, necessarily the obligation of a respondent to create a fair adjudication system that provides equal information to both parties.

So I think there are other things that can be done with technology in addition to providing space and opportunities for confidential communications with counsel that would allow people from cities to go to remote rural areas to represent and do it by video and not just to do it in the context of representation, but also in the context of counseling as individuals.

But the idea of choice, I think, seems to be really important in terms of differentiating what Ingrid's findings say that if somebody does remote adjudication. But I think in that case, it was mandated. If you make that optional like Judge Martinez has said, right?

Every attorney has a right to come in. And if that's the case across the board-- and I don't know, Judge Martinez, if that is the case across the board in all immigration courts that an individual might have the choice to appear in person or electronically. But if that is a choice, then I think that there would be more attorneys willing to take on cases that are in rural communities that could provide more representation.

I also think there are things like online resolution of very simple matters like continuances, hearings, submitting documents, which I think to some extent is done, but could go further, could be helpful and allowing attorneys in some places they don't allow it.

I don't know if it's all places. But I know in some places, they don't allow attorneys to go in with their phones or their tablets. And so even if you get into this location, you can't use your own technology to prepare documents and have your client review them or whatever.

So I think some of those things to be really, really helpful. And Professor Marouf and I have worked, have done some research. Like I said, it's not my area, but it's her area. My area is more thinking about how these services are delivered and how you think about, as Professor Eagly said, not just a system of justice in terms of who's delivering it, but who's receiving it, who's engaging with it.

There is an opportunity. Maybe create a national detainee database that allows pro bono counsel and other counsel to identify respondents who might be in need who don't have attorneys. So I think there's a lot that we can do with technology, but it does take really some real commitment to want to make this system that's a little bit fair.

- Thank you, Luz. So these are all really important points, I think, to look holistically at this problem from all different perspectives. One other question that, Daniel, I think you answered. But I think it would be helpful to discuss live as well is somebody asked about the strength of an internet connection and in the valley.

And I know you answered that in Laredo, it seems to be strong or fine, but you have trouble communicating with your clients in northern Mexico. Can you say more about that and how the internet connection might affect your ability to represent people?

- Yeah. All of the prep that we conduct in advance of the hearing is done remotely. We don't go into Mexico to meet with our clients. And so our ability to consult with our clients and to prepare them for their hearing is constrained by whatever technological constraints they're subject to that allow them to communicate with us.

And so if they don't have a strong internet connection-- and many of them don't, then we really cannot communicate with them as frequently or as regularly as we'd like. And that has real cost in terms of our ability to understand what their claim is and to prepare them for the hearing.

But we work around that as much as we can. But it makes our being at the Laredo remote facility-- that factors into our calculus to be present with our clients at the facility. Because it's our only opportunity to meet with them in person.

And so we take as much time as we can before and after the hearings to prepare them or to-- excuse me-- before and after the [INAUDIBLE] to prepare them for their merits. And so it is an ongoing challenge that we have struggled to resolve, just establishing reliable communication with our clients who are in northern Mexico, subject to MPP.

- Another question was about the rate of detainee representation not increasing meaningfully for many years. I believe that's correct. But you can probably correct me if I'm wrong and about, what can EOIR do? Maybe, Judge Martinez, you'd like to address this one, especially during COVID.

If a detained respondent is looking for counsel and hasn't been able to find counsel, how do you respond in this situation? Are there ways to help people find counsel or to accommodate them to give them more time right now? What are the courts doing with this issue?

- I think there's two issues that need to be addressed. One of them is their inability to obtain counsel for financial reasons. And the other one is the inability to obtain counsel because of remoteness of the location where they may be detained, which I believe-- I don't want to misquote Professor Eagly with some of her research, is that if they're placing these folks in locations that are very remote, they may have an inability to access counsel because of that issue.

And I think that if one of the learning lessons that we've been able to obtain from this COVID situation in reference to immigration law is that if we are going to allow parties to appear telephonically, then that should assist in the issue with individuals who are detained in remote locations being able to have counsel.

And the reason why is because if you have an individual who is in a remote location, but is able to obtain counsel financially, then the counsel doesn't have to necessarily travel from wherever they may be located to appear in the court. Because they can appear telephonically during this time period.

So one of the lessons from the COVID pandemic in reference to immigration court is how to use this technology to better access individuals to counsel on, how to improve the immigration court system in general. And I think that in reference to them being located remotely or because they're detained, I think we now know that we can use technology as simple as a phone call from your phone as counsel to the respondent and that the respondent's counsel can now appear telephonically.

I think more attorneys may be willing to represent an individual who is located remotely if they know that they can appear telephonically. That doesn't necessarily address the issue of the



financial situation. And I think one of the unique things about immigration law is, again, because we're getting the foreign nationals and unfortunately because I think someone in the past has mentioned this.

They do have issues being able to come up with the money to hire an attorney. I think from the bench's point of view, it's been one of the issues that I've seen is that not necessarily that they are located in a remote location, is that they don't have the money to go out and hire a private bar. That's just my perspective. I could be wrong on that issue, but that's just what I've seen.

- It seems that even if they don't have the money, one of the concerns is just the ability to get legal services like pro bono services to reach them or pro bono lawyers to take their case. It's just one additional challenge, would be the geography of actually meeting with them.

- One thing that I'll say, just because I had to add to that, is that a lot of pro bono attorneys, they may be corporate attorneys who are working on their first-ever immigration proceeding, right? And so it is intimidating. The idea of participating your first immigration proceeding telephonically is, I think, intimidating. And I think there is a somewhat natural desire to be present in front of the judge when you don't have any real experience with immigration courtroom.

- There's also an interesting comment that just came through the question and answer, which suggested that perhaps keeping some of these standing orders that permit telephonic-- or I would advocate for video appearances that would be allowed post-COVID could help increase attorney representation possibly on the pro bono end.

Because you're being asked to give some of your time. But then you're also asked to travel, probably pay a hotel somewhere hundreds of miles away. You're more likely to take on a pro bono case if you don't have to add that additional expense.

- I could just jump in on the representation. Representation rates have crept up slightly. In the most recent year, EOIR actually stopped reporting the level of representation in immigration courts. But I think in thinking about whether that really means there's more lawyers, it's important to note that the number of cases that are being decided is declining.

So when I wrote my paper with Steven Shafer, we found actually the number of cases with lawyers has remained relatively flat over time. And that points to a shortage of lawyers who are willing to do and able to do this work. I think increasing with access to technology in the current moment is a necessity.

But moving forward, I think we also need to think about questions of institutional design, video enabled courtrooms to be moved further and further away, which has made it harder and harder for counsel to access those individuals who are placed in these remote centers.

So I think we also need to go back to the first principles of why we have people locked up so far away. If they were closer, they would have access to counsel in a traditional counsel relationship that we teach young lawyers and that pro bono lawyers are looking for. And that is important to clients.

- And to address something really quite that Professor Herrera brought up-- pre-COVID, my practice was to allow telephonic hearings, especially in scenarios where we had a pro bono, whether it was an individual, or service, or a group, or non-profit organization to appear telephonically.

And a lot of the respondent's counsel in their motion for telephonic hearing would put in there I'm a pro bono attorney and I cannot take the further expense of traveling to Houston or wherever the hearing may be-- Dallas, Fort Worth. And that is something that I personally as a judge would definitely take into consideration in granting those hearings.

And most of them, if not all, were granted, because of the reasons that were brought up by Professor Herrera, which is you try to expand the access to counsel, especially in a pro bono classic situation. I suspect that post-COVID, whenever that may happen, that-- well, I know for myself, I'm going to continue to do that practice of when I look at the motion for telephonic hearing, if it is a pro bono organization. But I definitely take that into consideration when granting it.

- Great. I know there have been a couple more comments about advocating for keeping the automatic granting-- or maybe not automatic, but this position to grant a motion for telephonic testimony for some of these cases. Another question is about improving access for telephonic appearances in the sense that right now, respondent's counsel often waits around for hours.

The hearing might be set for 9:00. I've had a court call me as late as 5:00 PM for a 9:00 AM hearing. It's very hard on respondent's counsel to not know exactly when the court is going to call. And so of course, try to always be available. Is there any way to improve that so that we have a better window slot of time to save for the court's hearing? I don't know if there is some way to make the calendar such that the time can be a little bit more concrete.

- I may be misunderstanding the nature of the question. Are we talking about for a merits hearing, the time when the judge calls?

- Maybe more for [INAUDIBLE], where there is a lot of cases scheduled and so the judge between 9:00 and 12:00 or whatever might have 40 cases on the docket. And everybody's hearing is set at the same time. But you don't know when you're going to get the call. I think often just for a master, you don't know when you're going to get a call for a telephonic appearance, even though the hearing is set at a certain time. And it can be hours later.

- Yeah. It's hard for me to opine on that issue, because it's going to come to the individual judges handling their dockets as to when they like to make the phone calls to the parties on telephonic appearances. My personal practice-- but again, this is just in my personal practice, is I try to handle the telephone experience first to get them out of the way so that those-- I realize that I have counsel sitting in offices waiting on these hearings.

And out of respect for counsel, I just want to get their cases handled, so they can go about their business. But not every judge may have that perspective. So maybe some of my colleagues should be more considerate of individual time of the participants.

I try to be. But obviously, there are sometimes some issues that come up where we do run late, or we're not able to make that phone call in a timely manner. But, yes, my personal practice is to make phone calls as soon as possible so that we can move on. Maybe other judges have the practice of law to make that phone call last.

And I'll handle the people who actually are here present first for whatever philosophical or legal reasons they may have. But it's going to be hard to have a standardized practice for all those as to how they handle the telephonic hearings. Now, I know on merits, that's totally different for me.

If we're having a merits and it's set at 8:30 in the morning, I'm very respectful of people's time. I'm going to call you at 8:30 in the morning. And I expect you to be ready at 8:30 in the morning. Because I know that, again, both the government and the private bar-- you folks are very busy. You have a lot of clients. You have a lot of things going on. And I'm going to be very respectful of your time. And I expect the same from you.

But I'll call you right on time. And if there's a delay for any reason, I will call you to let the parties know. They're not going to get started on time, because of this reason. And I'll call you in 30 minutes. And usually, my experience has been that has worked wonderful.

DHS has always answered their phone calls on time whenever we call to start the hearing. And the private bar has always been [INAUDIBLE]. I haven't had any negative experience in reference to calling a party and they not answering or not being ready. Usually, all the parties are ready to go. So that's been great.

- So we're a little bit after 1:00. Just to wrap up, I wanted to ask a question about, which of these technologies do you think should continue post-COVID? I mean, are there things we've learned from this experience that can affect what we prioritize going forward in terms of technological change?

Well, I definitely think the telephonic appearances should appear post-- continue post-COVID for all the reasons that we've all previously stated, especially with pro bono folks to increase access to legal representation in the immigration context.

I think that keeping the telephonic appearances is important. It's also important for non-pro bono individuals, private bar individuals. But that is definitely one of the technologies that I think we should definitely keep going after post-COVID.

- Great. Would anyone else like to answer that question?

- Sure. From the DHS perspective, I think that this has really shown the importance of the ECAS system, which is going to be the immigration court PACER system. We would love to see that system evolve into a system which also serves everybody involved.

I think in the initial rollout, it's not planning to be a service system. So you have to accomplish a service in another manner. But we would love to see ECAS evolve into a system like PACER where you file it on PACER. It all gets served out. You're good to go.

Absent that, with DHS, like I said, we have our eService system. I just want to encourage everybody to sign up for that. Use that. It's fantastic. But I think the e-filing, the email boxes which hopefully transitions to e-filing-- that's going to really solve even the information access point, which Professor Herrera made. I mean, I think ECAS, as it gets rolled out and hopefully gets into a workable system, should really solve a lot of the issues.

- And I agree. I think once we get the ECAS, I know that it is rolling out nationwide. And eventually, it will be nationwide. And I agree. I think that once that program is up and running the way it's intended to be up and running, that is going to definitely change the way we practice immigration law. And it's going to increase our ability to practice in a way more efficient manner than what we're doing now. So I'd really look forward to the ECAS for rollout as well.

- It seems from a couple of questions, that page limit right now-- it seems above a certain page limit, you still have to file by paper. You can't email it. So hopefully, once we move to a full e-filing system, that won't be an issue anymore.

- And I know that EOIR has an entire team of folks that are working on all of these technological issues. The filing page limit issue is an issue that has been brought up by multiple parties. And that is the product of the program being built by computer folks who don't practice law, much less immigration law and not knowing the ins and outs of how immigration law filings work, including these page limits on the program.

And I know that not only has the private bar, government, and the bench addressed this issue of the filings are voluminous in immigration court. We need to increase the page limits. And I know that they are currently working on that. And they are working on other issues and glitches that have come up.

I think, eventually, very soon, hopefully, we will have the ECAS system rolled out nationwide. And that will be akin, not necessarily similar, but is akin to PACER. And we do know that PACER has had a large impact on the federal side of the practice of law in addressing its efficiencies.

- I know we're out of time, but I just wanted to say a couple of things. I think in addition to more equitable access to information, the other part is really having more equitable access to attorneys who might represent. Or it's not always attorneys. Sometimes it's the AA accredited folks, right? Or they're representing individuals. But more opportunities for confidential consultations from within these detention centers are really important.

- Also, to echo that, I think that from the perspective of respondent counsel, telephonic appearances is incredibly valuable. I think it's just one facet of making and of representing counsel in their proceedings. And so I would hope that in addition to ensuring that the option to appear telephonically persists post-COVID, there is also opportunities to confer with clients before a merits hearing, or whether that's at a remote ATC facility or in a detention context and then to confer with and after. And so being attentive to the different ways in which counsel represents their client's interests at the hearing itself, in addition just to the appearance before IJ and counsel for government.

- Yeah, I'm really glad you brought that up. Because I think that one of the key issues for our respondents' counsel is communicating with detained clients or with clients in Mexico in the case of the MPP. And so that is probably just as important, if not more important than actually appearing in court. Because you can't do one without the other. So I'm glad you discussed that.

Well, we are out of time. Are there any final comments anybody would like to make before we close? Well, I would like to thank all of you for taking the time to do this. I think this has been incredibly helpful and informative. I know these are difficult issues in going forward.

Hopefully, we'll see some more progress in this realm of technological change. I'm sure we will. And again, I just want to thank each and every one of you for sharing your experiences and being so open with discussing these widely in this webinar.

So you can find this presentation and prior ones at our website at [TAMULawAnswers.info](http://TAMULawAnswers.info). And that's the address right there. So thank you all. And I can't really say we will see you later, but thank you all for participating. Take care. Bye-bye.

While some of the panelists are attorneys, they are discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.