



ROUND TABLE
of Former Immigration Judges

December 10, 2019

VIA EMAIL AND FIRST CLASS MAIL

James McHenry, Director
Christopher Santoro, Acting Chief Immigration Judge
Executive Office for Immigration Review
5107 Leesburg Pike, 18th Floor
Falls Church, VA 22041

Dear Director McHenry and Chief Immigration Judge Santoro,

Public access to the immigration courts is vital to the constitutional protections of the respondents who appear in court. Pursuant to 8 C.F.R. § 1003.27 the immigration courts are open to the public. Limited exceptions to public access exist under the regulations, for example, to protect witnesses or parties or the public interest (§ 1003.27(b)), in VAWA cases (§ 1003.27(c)), and when there is a protective order (§ 1003.27(d)). Asylum hearings are confidential and are not open to the public unless the asylum applicant consents (8 C.F.R. § 1208.6).

Migrant Protection Protocol “MPP” hearings are routinely conducted in violation of 8 C.F.R. § 1003.27. Observers have been denied access to remote hearing locations where respondents are appearing in “tent courts.” In addition, it was recently announced that some MPP hearings would be heard via video teleconference by immigration judges in the Fort Worth Adjudication Center. For such hearings, public access is entirely restricted, as observers are not allowed in the tent courts or the adjudication centers. As Judge Ashley Tabaddor stated in an interview with CNN, “MPP is rife with issues but by assigning the adjudication centers to the tent courts takes us to a new low where public access to the court are now eliminated.” She further stated, “[t]his is not the way we as judges or courts should function.”

We agree with Judge Tabaddor. On December 5, 2019, a member of our group of former immigration judges, Ilyce Shugall, was denied access to the immigration court while attempting to observe an MPP individual calendar hearing. Human Rights First requested permission for the observers to sit in Laredo with the respondents in the tent courts. The request was denied. Accordingly, the observers, including Former Immigration Judge Shugall, who traveled across the country, were required to sit in San Antonio to observe respondents appearing from Laredo via

VTC. Although the individual hearing was an asylum merits hearing, the respondent consented to Former Judge Shugall observing the hearing.

Early in the hearing, Immigration Judge Cynthia Lafuente-Gaona confirmed that the respondent consented to Former Judge Shugall observing, as she was with a delegation from Human Rights First. Subsequently, Judge Lafuente-Gaona asked Former Judge Shugall to step out of the courtroom because she was taking notes on her computer and looking at her cell phone. The assistant chief counsel for ICE was taking notes on his computer, but was never asked to cease his note taking. Former Judge Shugall advised she would put both her phone and computer away and take notes on a note pad. Judge Lafuente-Gaona told Former Judge Shugall she “should know better” because she was a former judge. Former Judge Shugall explained that attorneys and observers used computers and phones in her courtroom when she was on the bench and had used her computer and phone in court all week, including in Judge Lafuente-Gaona’s courtroom the prior day. Former Judge Shugall remained in the courtroom and continued her note taking on a note pad. Some time later, a legal fellow from Human Rights First entered the courtroom. Judge Lafuente-Gaona again confirmed with the respondent that he consented to the additional observer. While doing so, she told the respondent that the observers were “writing about what he was saying,” which was entirely untrue. Judge Lafuente-Gaona then told the observers that their note taking on note pads was distracting and asked both to leave. After a break, the observers confirmed with Judge Lafuente-Gaona that she was requiring they remain outside of the courtroom for the remainder of the hearing. She had two male guards escort the two female attorneys out of the courtroom. That same day the legal fellow from Human Rights First was prevented from observing another pro se merits hearing.

Immigration judges preside over individual and master calendar hearings that are rife with distractions. During master calendar hearings, people are constantly entering and leaving the courtroom, taking notes, talking, and moving papers. On many dockets, children are crying, crawling on the floors, throwing toys and food, and playing with microphones. In addition, in immigration courtrooms across the country, parties routinely take notes on computers and use cell phones in court. Observers taking notes during a pro se asylum hearing is not inherently distracting. That the judge became distracted because a former immigration judge and an attorney from a human rights organization made her nervous does not justify closing the courtroom.

While the above examples are specific to MPP hearings, issues related to public access to the immigration courts is not exclusively limited to MPP. For example, according to a Daily Beast article, earlier this month a reporter was forced to leave an immigration courtroom in New York.

Very few respondents subject to MPP are represented. There are significant concerns with access to counsel and due process in MPP proceedings. Allowing observers in court, pursuant to the regulations, is crucial. A judge’s failure to follow the regulations and the constitution should be of great concern to EOIR. It is certainly of paramount concern to this group of former immigration judges.

As former immigration judges, we understand that a judge has the right to control the conduct of those attending a hearing, but exercise of that control cannot compromise the parties’ due pro-

cess rights. We request that EOIR investigate this issue and ensure that the public has appropriate access to all immigration courts.

Very truly yours,
/s/

The Round Table of Former Immigration Judges

Steven Abrams
Terry Bain
Sarah Burr
Teofilo Chapa
Jeffrey Chase
George Chew
Matthew D'Angelo
Bruce J. Einhorn
Cecelia Espenoza
Noel Ferris
James Fujimoto
Jennie Giambastiani
John Gossart
Paul Grussendorf
Miriam Hayward
Rebecca Bowen Jamil
William Joyce
Carol King
Margaret McManus
Charles Pazar
Laura Ramirez
John Richardson
Susan Roy
Paul Schmidt
Ilyce Shugall
Denise Slavin
Andrea Sloan
William Van Wyke
Polly Webber
Bob Weisel