

Video Appearances in Immigration Court Removal Proceedings: A Legal Analysis

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February 2, 2026

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FINDINGS

VIDEO APPEARANCES IN IMMIGRATION COURT REMOVAL PROCEEDINGS: A COMPREHENSIVE LEGAL ANALYSIS

This report examines the procedural, regulatory, and constitutional framework governing video teleconference (VTC) and telephonic appearances in immigration court removal proceedings. The analysis reveals a complex legal landscape in which immigration judges possess substantial discretion to conduct hearings via video or telephone under the Immigration and Nationality Act, yet this discretion is increasingly constrained by due process considerations, statutory consent requirements, and recent policy reversals. The empirical evidence demonstrates that detained respondents appearing virtually face significantly higher deportation rates than similarly situated in-person respondents, raising substantial fairness and access-to-justice concerns. Northern California practitioners must navigate jurisdiction-specific considerations while remaining cognizant of broader circuit law developments that directly affect client outcomes. This report synthesizes statutory authority, agency guidance, federal court precedent, and Northern District of California practice realities to provide a foundation for strategic decision-making regarding appearance modality in removal proceedings.

Statutory and Regulatory Framework Authorizing Remote Hearings

The fundamental statutory authority for video and telephonic hearings in immigration proceedings originates from the Immigration and Nationality Act as amended by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Under [8 U.S.C. § 1229a(b)(2)(A) and (B)][32], immigration judges possess explicit authorization to conduct removal proceedings through video conference, and may conduct hearings through telephone conference subject to specific consent restrictions. The statute distinguishes between different hearing types, recognizing that the modality of adjudication carries distinct procedural implications depending on whether the hearing constitutes an evidentiary hearing on the merits or a preliminary procedural matter.[1][32]

The regulatory implementation of this statutory authority appears in [8 C.F.R. § 1003.25(c)][21], which provides that an immigration judge may conduct hearings through video conference to the same extent as in-person hearings. This regulatory language grants immigration judges exceptionally broad discretion, explicitly permitting video proceedings for virtually any hearing type.[21][37] However, the same regulation imposes a critical limitation specific to telephonic proceedings: an evidentiary hearing on the merits may only be conducted through telephone conference with the respondent's informed consent after the respondent has been advised of the right to proceed in person or through video conference.[21][32][37] This consent requirement does not apply to video conferences, only to telephone calls, creating a meaningful distinction in the regulatory framework that has significant strategic implications for respondents seeking to preserve their procedural rights.[1]

The Immigration Court Practice Manual (ICPM), the authoritative procedural guidance issued by the Executive Office for Immigration Review (EOIR), codifies these principles while providing additional procedural detail. Chapter 4.7 of the ICPM confirms that immigration judges are authorized to hold hearings by video or telephone conference under INA § 240(b)(2) and 8 C.F.R. § 1003.25(c), with the same exception applicable to evidentiary hearings on the merits conducted by telephone.[1][35] The ICPM specifies that hearings held by video or telephone conference are conducted under the same rules as in-person hearings, a statement that appears straightforward but contains significant implications regarding credibility determinations, evidence presentation, and due process protections that later sections of this analysis will

examine in detail.[1]

An important procedural note relevant to filing and record maintenance: for hearings conducted by video or telephone conference, documents must be filed at the immigration court having administrative control over the record of proceedings, which may differ from the physical location from which parties participate.[1][35][49] This distinction has become increasingly important as EOIR has expanded its use of internet-based platforms such as Cisco Webex, which permit parties to appear from locations outside traditional courthouses. The ICPM notes that immigration judges frequently allow documents to be faxed between parties and the judge during video or telephone hearings, a practice that responds to the practical challenges of presenting physical evidence remotely but that also creates potential barriers for pro se respondents without easy access to fax machines or for practitioners managing complex litigation remotely.[1][35]

EOIR Policy Evolution: From PM 21-03 Through PM 25-25

Understanding the current state of video hearing policy in immigration courts requires careful attention to the evolution of EOIR guidance over the past five years, a period marked by significant policy reversals that reflect competing administrative priorities. The foundational policy document governing VTC hearings is [EOIR Policy Memorandum 21-03][6][38], issued November 6, 2020, following the COVID-19 pandemic's forced expansion of remote hearing capabilities. This memorandum, titled "Immigration Court Hearings Conducted by Telephone and Video Teleconferencing," explicitly states that "EOIR's policy remains that VTC may be used for any immigration court hearing, particularly when operational need calls for its usage." [2][6][38] The memorandum identifies multiple justifications for VTC reliance, including providing convenience and accessibility for respondents, reducing travel costs, consolidating and managing dockets efficiently, ensuring timely adjudication of cases, and reaching locations where no permanent immigration court is located.[6][38]

Critically, PM 21-03 emphasizes that immigration judges "exercise their independent judgment and discretion" on whether to conduct proceedings by video or telephone, subject to applicable law and ICPM requirements.[6][38] The memorandum notes that immigration judges may issue standing orders and immigration courts may adopt local operating procedures addressing telephonic or VTC appearances without requiring individual motions in each case.[6][38] The policy recognizes that either party may file a motion requesting telephonic or VTC appearances for parties or witnesses, with immigration judges retaining discretionary authority to grant or deny such motions based on case-specific circumstances.[6] However, the memorandum contains no affirmative direction regarding how judges should exercise this discretion or what factors should guide their decisions, leaving substantial interpretive space for individual judge preferences to shape the modality framework in practice.

In August 2022, EOIR Director David L. Neal issued Director's Memorandum 22-07, titled "Internet-Based Hearings," which represented a significant policy development regarding respondent rights in virtual proceedings.[34][53] This memorandum provided guidelines specifically for internet-based video hearings using platforms such as Webex, distinguishing such hearings from the internal closed VTC systems historically used by EOIR.[34][53] The guidance stated that while the decision whether an immigration judge appears in court or remotely rests with the court based on agency policy and operational needs, "an immigration judge should accommodate a respondent's request to appear in court or remotely where appropriate and practicable." [34][53] For represented respondents, the memorandum instructed that immigration judges "should generally grant requests for the respondent, counsel, or both to appear in court or remotely." [34][53] For unrepresented respondents, the memorandum provided that "the court will not direct an unrepresented respondent to appear remotely" but that such respondents "may request to do so, and an

immigration judge should generally grant such a request." [34][53]

DM 22-07 further provided that requests for remote or in-person appearances must be made in writing fifteen days before the hearing unless waived by the immigration judge, a procedural requirement that creates planning obligations for attorneys and potentially disadvantages pro se respondents lacking knowledge of court procedures. [34][53] The memorandum also addressed witness appearances, requiring that immigration judges accommodate requests for witnesses to appear remotely where such requests are reasonable, thereby recognizing that remote testimony can enhance access to evidence and reduce burdens on witnesses and parties. [34][53]

The stability of this policy framework proved short-lived. On March 14, 2025, EOIR Acting Director Sirce Owen issued Policy Memorandum 25-25, rescinding and canceling DM 22-07 entirely. [20][57] PM 25-25 states that DM 22-07 was "purposeless" and beyond the director's authority because it "directed" judges to decide motions related to video hearings in a particular way, thereby allegedly constraining judicial discretion. [20][57] The memorandum further argues that DM 22-07 "contradicted" the Trump-era PM 21-03, claiming that PM 21-03 established that immigration judges possess independent discretion free from directive guidance regarding how to exercise that discretion. [20][57] By rescinding DM 22-07, EOIR has returned to the more permissive PM 21-03 framework, which contains no affirmative requirement that judges accommodate respondent requests for either in-person or remote appearances. [20][57]

This policy reversal has direct and immediate consequences for respondents seeking to influence their hearing modality. Where DM 22-07 had created a presumption favoring accommodation of respondent preferences for represented respondents and a prohibition on directing unrepresented respondents to appear remotely, the current policy framework under PM 21-03 (as clarified by PM 25-25) contains no such presumptions or prohibitions. [20][38][57] Immigration judges now possess what appears to be unfettered discretion to determine hearing modality based on operational needs and individual judge preferences, subject only to the statutory consent requirement for telephonic merits hearings. [20][38]

Due Process Protections and Empirical Evidence of Outcome Disparities

The due process framework governing video hearings in immigration court proceedings reflects tension between the statutory authorization for remote adjudication and constitutional concerns regarding fair procedures in cases with severe consequences. While video hearings are explicitly authorized by statute, federal courts have recognized that in particular circumstances, video conferencing may violate due process rights or the right to a fair hearing. [17] The Ninth Circuit, whose precedent controls Northern California proceedings, has articulated the standard in [*Shin v. Mukasey*, 547 F.3d 1019, 1024 (9th Cir. 2008)][17], establishing that to successfully attack a removal order on due process grounds, "it must be shown that the proceedings were manifestly unfair and that the actions of the [immigration judge] were such as to prevent a fair hearing." [17]

The Ninth Circuit has further recognized that procedural due process violations and ineffective assistance of counsel claims "are predicated on the right to a full and fair hearing" and "are not affected by the nature of the relief sought," creating a baseline fairness requirement that applies regardless of whether the relief sought is discretionary (such as cancellation of removal) or based on more rigorous statutory entitlements. [17] This principle has particular relevance to video hearings, as the format may impair the fairness of proceedings through multiple mechanisms that subsequent sections of this analysis examine in detail.

The empirical evidence regarding video hearing outcomes is striking and consistent across multiple studies. The landmark study by Professor Ingrid V. Eagly, published in the *Northwestern University Law Review* and

reporting on the first empirical study of televideo technology in immigration courts, reveals what Eagly terms an "outcome paradox."^{[8][27][30]} Her study comparing outcomes of televideo and in-person cases in federal immigration courts demonstrates that detained televideo litigants were significantly more likely than detained in-person litigants to be deported, yet judges did not deny respondents' claims in televideo cases at higher rates.^{[8][27][30]}

The statistical findings are substantial and persist even after controlling for numerous variables. When compared to similarly situated detained in-person respondents, detained televideo respondents were ninety percent more likely to apply for relief, thirty-five percent more likely to obtain counsel, and six percent more likely to apply only for voluntary departure.^{[8][27][30]} These results were statistically significant even when controlling for other factors that could influence case outcomes, including the judge assigned to the case, representation by counsel, prosecutorial charge type, nationality, and fiscal year of decision.^{[8][27][30]}

Eagly explains that the inferior outcomes for televideo litigants are not attributable to judges adjudicating deportation claims more harshly over a video screen, but rather to "depressed engagement with the adversarial process" among litigants separated from the traditional courtroom setting.^{[8][27][30]} Importantly, among those individuals who actually applied for various forms of relief, there was no statistically significant difference in outcome after controlling for other factors, indicating that video hearings do not appear to affect judicial decision-making on the merits once litigation is engaged.^{[8][27][30]} However, because video participants were substantially less likely to seek relief or retain counsel, overall video cases were significantly more likely to end in removal.^{[8][27][30]}

Eagly identifies several mechanisms through which video proceedings lead to reduced respondent engagement. First, respondents may perceive televideo proceedings as unfair or illegitimate, which influences their willingness to participate fully in the adversarial process.^{[8][27][30]} Second, technical challenges inherent to video litigation—including difficulties in presenting evidence, managing documents, and cross-examining witnesses—create practical barriers to effective advocacy.^{[8][27][30]} Third, remote litigants experience lower quality interactions with courtroom actors (judges, prosecutors, interpreters, and other participants) due to the spatial separation that video creates.^{[8][27][30]} Fourth, the exclusion of a public audience from remote courtrooms removes a social dynamic that may encourage respondent participation and provide emotional or motivational support.^{[8][27][30]}

Beyond Eagly's foundational work, empirical evidence from the Brennan Center for Justice further documents disparities in video proceedings across multiple contexts. A study of criminal bail hearings found that defendants whose hearings were conducted over video had substantially higher bond amounts set than their in-person counterparts, with increases ranging from fifty-four to ninety percent depending on the offense.^{[8][11]} This research suggests that video modality may systematically disadvantage respondents across multiple adjudication contexts, not merely immigration court. The Brennan Center research also identifies a study of immigration courts revealing that detained individuals were more likely to be deported when their hearings occurred over video conference rather than in person, consistent with Eagly's findings.^{[8][11]}

Several studies of remote witness testimony by children found that children were perceived as less accurate, believable, consistent, and confident when appearing over video.^{[8][11]} In three out of six surveyed immigration courts, judges identified instances where they had changed credibility assessments made during a video hearing after holding an in-person hearing, suggesting that judges themselves recognize potential distortion of credibility determinations in the video context.^{[8][11]}

The April 2017 EOIR-commissioned report, conducted by Booz Allen Hamilton, concluded that virtual

proceedings should be limited to procedural matters due to due process concerns.[15][18][45] This agency-sponsored analysis directly contradicted subsequent official EOIR policy promoting expanded VTC use, yet the underlying concern about due process interference has never been formally addressed through regulatory revision or explicit policy override.

Procedural Framework for Requesting Modified Hearing Formats

The procedural mechanisms for requesting video or in-person hearings vary depending on whether a respondent is represented by counsel and whether the request seeks to move from scheduled in-person proceedings to remote proceedings or vice versa. The current framework, following PM 25-25's rescission of DM 22-07, provides immigration judges with discretion to accommodate or reject such requests based on case circumstances, with no affirmative presumption favoring respondent preferences.

Motion to Change Hearing Format: Pro Se Procedures

For unrepresented respondents seeking to change their hearing format, the National Immigration Project has published a comprehensive guide specifically designed for pro se litigants.[2][9][54] This guide, updated in 2025, instructs respondents to prepare a Motion to Change Hearing Format that must include both the motion itself and supporting evidence explaining the reasons for the requested change.[2][9][54]

The motion must clearly explain why the respondent wants to change the format of the hearing to an online hearing, potentially citing reasons such as medical conditions preventing in-person attendance, transportation barriers, work or family obligations, or other hardship factors.[2][9][54] Supporting evidence might include medical documentation, letters from healthcare providers explaining medical limitations, evidence of disability, transportation difficulties, or financial constraints that make attendance at the courthouse impracticable.[2][9][54] The guide explicitly instructs pro se respondents not to assume that filing a motion will result in the requested format change, and strongly recommends maintaining a backup plan to attend the hearing in person unless and until the motion is granted and a court order is received.[2][9][54]

Procedurally, the motion must be mailed to both the immigration court where the case is pending and the government attorney (Office of Chief Counsel, Department of Homeland Security).[2][9][54] The motion should be submitted as soon as possible to give the court adequate time to decide before the next scheduled hearing.[2][9][54] Pro se respondents can access their case information and confirm hearing details through the Automated Case Information System (ACIS) at <https://acis.eoir.justice.gov/> or by calling the immigration court hotline at 1-800-898-7180.[2][9][19][54]

The template provided in the pro se guide requires respondents to include their name, A-number (the unique case identifier beginning with the letter "A" followed by eight or nine digits), the name of the assigned immigration judge, and the date and time of the next hearing.[2][9][54] The motion must then explain in detail why the respondent is requesting the format change, with particular attention to why proceeding remotely (if seeking virtual) or in-person (if seeking to change from scheduled virtual) would be "appropriate and practicable for all parties." [2][9][54]

Represented Respondents and Counsel-Initiated Motions

For respondents represented by counsel, the motion procedures follow the Immigration Court Practice Manual requirements for general motions while applying VTC-specific considerations. Under [Chapter 5.10 of the ICPM][12][51], motions to permit telephonic or video appearances must be filed with a cover page labeled appropriately (either "MOTION TO PERMIT TELEPHONIC APPEARANCE" or a motion to change hearing format to internet-based), and must comply with the deadlines and requirements for filing generally applicable

motions.[12][31][51]

For master calendar hearings specifically, Chapter 4.15 of the ICPM provides detailed procedures for telephonic appearances.[31] The motion should state the date and time of the master calendar hearing and explain the reason(s) for requesting a telephonic or video appearance.[31] If requesting a telephonic appearance, the motion should state the telephone number of the respondent or counsel making the appearance.[31] Critically, merely filing a motion to permit a telephonic or video appearance does not excuse the respondent's in-person appearance at the scheduled hearing; the respondent must appear in person unless and until the immigration judge grants the motion.[31]

The current ICPM guidance under the post-PM 25-25 framework contains no prescribed timeline for filing such motions, no requirement that judges grant or even consider respondent preferences, and no statement of policy rationale guiding judicial discretion regarding whether to accommodate format change requests. This represents a significant change from the pre-March 2025 framework under DM 22-07, which had specified a fifteen-day advance notice requirement and had articulated presumptions favoring accommodation of requests from represented respondents and prohibitions on directing unrepresented respondents to appear remotely.

Motion Standards and Judicial Discretion

The current standard for judges' consideration of video/telephonic appearance motions remains largely discretionary and judge-specific. The ICPM states that motions should explain reasons for the request and, where appropriate, be supported by evidence, but does not specify what factors judges should weigh or what types of evidence should be considered compelling.[31][51] Immigration judges may consider factors such as travel distance, cost of travel, medical conditions, witness availability, case complexity, whether evidence presentation requires in-person testimony, and operational considerations affecting court calendars and resources.

Detained Versus Non-Detained Respondents: Distinct Procedural and Practical Considerations

The legal and practical implications of video hearings differ substantially depending on whether a respondent is in DHS custody. For detained respondents held in immigration detention facilities, the primary modality has historically been in-person court appearances via internal closed video teleconferencing systems, where respondents appear from the detention facility while judges and DHS counsel appear from courtrooms in different locations.[7][15][33]

However, the empirical research demonstrates that detained respondents appearing via video are substantially disadvantaged in multiple ways. The Northwestern study found that detained respondents appearing via televideo were ninety percent more likely to apply for relief than detained in-person respondents, a massive disparity that persists even after controlling for numerous variables.[8][27][30] This finding indicates that the video modality itself—separate from judge characteristics, case facts, or other variables—measurably depresses respondent engagement with the legal process.

For detained respondents, the practical challenges of video representation are compounded by institutional barriers. The ACLU's report "No Fighting Chance" documents systematic impediments to effective attorney-client communication in immigration detention facilities, including inadequate telephone access, inability to schedule phone calls with detained clients, lack of confidential meeting spaces for in-person legal visits, and restrictions on attorneys bringing necessary technology (computers, cellphones) to legal visits.[52] At approximately eighty-five percent of detention facilities, detained immigrants cannot make free outgoing

phone calls to counsel.[52] At many facilities, attorneys cannot even schedule telephone calls with detained clients at mutually convenient times, preventing both routine and urgent communications necessary for representation.[52]

These detention-facility barriers directly implicate video hearing fairness. When a detained respondent must appear via video from the detention facility where communication with counsel has been severely restricted, the respondent's ability to meaningfully participate in the adjudication process is substantially compromised. Counsel may have had limited ability to fully prepare the respondent for hearing testimony, to explain legal concepts or procedural requirements, or to address the respondent's concerns before the hearing occurs. The respondent sitting before a video screen in a detention facility may not have access to documents, may have had limited opportunity to review evidence or legal arguments, and may experience the hearing as an isolated, disempowering event rather than an opportunity to present a full narrative and participate meaningfully in the legal process.

For non-detained respondents, the calculus differs substantially. Many non-detained respondents reside in communities distant from immigration courts, making in-person attendance costly and logistically challenging. For such respondents, the ability to appear remotely via Webex or similar platforms may genuinely enhance access to hearings and reduce hardship. The primary disadvantage-reduced engagement with the legal process and lower likelihood of retaining counsel-may be outweighed, from individual respondent perspectives, by the practical ability to appear at all.

However, the aggregate empirical evidence suggests that even non-detained respondents may face depressed outcomes in video hearings. The decision to pursue remote modality should be made with explicit awareness of the research demonstrating that video appearances correlate with lower application rates for relief, lower rates of counsel retention, and ultimately higher removal rates, even though judges do not appear to decide cases more harshly on the merits for video participants.

Choice of Law and Venue Issues in Video Teleconference Hearings

The expansion of video hearings has created novel choice-of-law questions because immigration judges and respondents may be located in different federal circuits, potentially creating ambiguity regarding which circuit's law should apply to the proceedings. This issue has generated significant BIA and circuit court attention, with important implications for respondents in cases where circuit precedent varies substantially on controlling legal issues.

The seminal BIA decision on this issue is [Matter of Garcia, 28 I&N Dec. 693 (BIA 2023)][14][43][46], which clarifies that the controlling circuit law in immigration court proceedings is the law governing the geographic location of the immigration court where jurisdiction vests and proceedings commence, as opposed to the physical location from which the immigration judge is conducting the hearing or the location of the administrative control court.[14][43] The BIA rejected arguments that the immigration judge's physical location should determine applicable circuit law, reasoning that this approach would create uncertainty and instability in the controlling law framework.[14][43]

However, the circuits themselves have taken varying approaches to the choice-of-law question. The [Seventh Circuit in Chavez-Vasquez v. Mukasey, 548 F.3d 1115, 1118 n.1 (7th Cir. 2008)][14], held that venue is determined by the location of the immigration court rather than the location from which witnesses appear via teleconference.[14] The [Tenth Circuit in Medina-Rosales v. Holder, 778 F.3d 1140, 1143 (10th Cir. 2015)][14], held that the immigration judge's physical location and the fact that proceedings were conducted via video conference do not change the applicable circuit law.[14] The [Third Circuit in Luziga v. Att'y Gen.

(cited in *Matter of Garcia*)[14], held that venue was proper in its circuit where the respondent appeared from a facility in Louisiana and the immigration judge appeared via videoconferencing from an immigration adjudication center in Virginia.[14]

For Northern California practitioners, the Ninth Circuit's approach is controlling. The Ninth Circuit has not published extensive guidance specifically addressing choice-of-law in VTC proceedings, but the Ninth Circuit's general venue principles and the BIA's holding in *Garcia* establish that the docketed hearing location (the immigration court where the Notice to Appear was filed and jurisdiction vests) determines applicable circuit law, regardless of where the immigration judge physically conducts the hearing.[14][43]

This issue has direct strategic significance. Respondents arrested and detained in Northern California may have their cases docketed in the San Francisco Immigration Court (Ninth Circuit law), but if an immigration judge conducts the hearing remotely from an immigration adjudication center in another circuit, the case remains governed by Ninth Circuit law.[14][43] Conversely, a respondent whose case is docketed in a Fifth Circuit immigration court but who appears from a detention facility in Northern California remains subject to Fifth Circuit law.[14][43] For cases where circuit law diverges significantly on critical issues (asylum law, cancellation of removal standards, credibility assessment standards, etc.), this distinction can materially affect case outcomes.

Respondents and counsel should strategically consider motions to change venue when venue in a less favorable circuit appears likely, particularly early in proceedings when such motions may be more readily granted. [Under 8 C.F.R. § 1003.20(b)][51], immigration judges have discretion to grant or deny venue change motions based on good cause, and the motion requires demonstration of compelling circumstances justifying transfer to a different jurisdiction.[51] However, counsel should engage in aggressive venue analysis and advocacy when circuit-law differences could affect substantive outcomes.

Credibility Determinations, Demeanor Assessment, and Video Hearing Fairness

One of the most significant due process concerns regarding video hearings involves the immigration judge's assessment of respondent credibility based on demeanor and other behavioral indicators. Immigration judges are expressly authorized under [8 U.S.C. § 1229a(c)(4)(B)][32], to base credibility determinations on numerous factors, including demeanor, candor, responsiveness, the inherent plausibility of the account, consistency between written and oral statements, internal consistency of statements, consistency with other evidence of record, and any inaccuracies or falsehoods in statements.[32] The statute further provides that there is no presumption of credibility, but if no adverse credibility determination is explicitly made, the respondent shall have a rebuttable presumption of credibility on appeal.[32]

However, empirical research and recent legal scholarship have raised substantial concerns about whether demeanor-based credibility assessments remain fair and reliable in video hearing contexts. Legal scholars Liz Bradley of the University of Pennsylvania Carey Law School and Hillary Farber of the University of Massachusetts Law School have published detailed analyses of how video teleconferencing distorts demeanor-based credibility assessment in immigration proceedings.[39][42]

Bradley and Farber emphasize that demeanor is fundamentally unreliable as a credibility metric, even in in-person proceedings. The average person can discern truth from lies based on behavioral indications with only fifty-four percent accuracy-barely above chance-and judges may not perform substantially better in specific cases.[39] Video hearings compound this unreliability through multiple mechanisms. First, body language-which research indicates accounts for over half of the meaning and understanding of language-becomes difficult or impossible to perceive over video, even when camera angles attempt to capture

full-body framing.[39] Second, camera angle itself affects perceived credibility, with higher camera angles associated with reduced perceived credibility compared to eye-level or lower angles.[39]

Third, technical issues during video hearings can create what researchers term "cognitive fluency" effects, where judges' negative feelings about struggling to listen to a witness or experiencing poor audio quality can be misdirected to their evaluations of evidence quality and respondent credibility.[39] Fourth, interpreter performance deteriorates in video contexts, with interpreters unable to perceive body language as readily over video and struggling to indicate to speakers to pause or slow their speech.[39] When interpreters are translating simultaneously over video with the judge also speaking, their translation is projected at the same volume as the judge's speech, creating listener confusion and degrading the clarity of interpretation.[39]

Additionally, trauma-present in substantial numbers of immigration cases-can cause flattened affect or memory deficits that judges may misinterpret as dishonesty.[39] Trauma-related symptoms become even more difficult to distinguish from credibility problems in video contexts where judges cannot observe subtle behavioral cues that might indicate trauma responses versus deliberate deception.[39]

Bradley and Farber document a striking empirical finding: immigration judges are thirty-one percent more likely to order deportation for applicants in video hearings than in in-person hearings when credibility determinations are involved.[39][42] This disparity persists even among experienced judges and appears related to the systematic distortion of demeanor assessment in video contexts rather than to judge bias or case-specific factors.[39]

Courts have recognized these concerns in some contexts. In [Matter of R-C-R-, 28 I&N Dec. 74 (BIA 2020)][56], the BIA acknowledged that a video conference hearing on an asylum claim may be unfair if the fact-finder has difficulty gauging demeanor for credibility determination, if counsel is unable to privately confer with and advise the respondent, or if there are insurmountable technological problems with sound or video quality.[56] The BIA noted that fairness in video proceedings must be evaluated on a case-by-case basis, depending on the degree of interference with the full and fair presentation of the respondent's case and the degree of prejudice suffered by the respondent.[56]

However, appellate courts face substantial barriers in reviewing credibility determinations made in video hearings. Technical issues are typically not written into hearing records unless expressly announced during proceedings, preventing appellate courts from reviewing what occurred and assessing whether video modality affected the assessment.[39] The prevailing legal framework affords extraordinary deference to immigration judges' credibility assessments, reversing such determinations in fewer than five percent of cases, on the theory that trial judges in in-person proceedings possess a unique advantage in assessing credibility face-to-face.[39] This extraordinary deference becomes distinctly problematic when the "face-to-face" contact has been mediated through video technology that research demonstrates systematically distorts demeanor perception.

Bradley and Farber recommend a prohibition on adverse credibility findings based on demeanor for hearings conducted via video, as the assumptions underlying deference to demeanor assessments are incongruous with the realities of virtual hearings.[39][42] Short of such a formal prohibition, they recommend that respondents request consent before holding hearings over video and that video hearing recordings be made available for appellate court review so appellate courts can re-assess credibility determinations rather than accepting the immigration judge's assessment without independent review.[39][42]

Northern California Immigration Court Practice Realities

Immigration court proceedings in Northern California occur within the framework of three EOIR locations serving the region: the primary [San Francisco Immigration Court at 100 Montgomery Street, Suite 800, San Francisco, CA 94104][31], a secondary facility at [630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111][31], and the [Concord Hearing Location at 1855 Gateway Blvd., Suite 850, Concord, CA 94520][31]. These courts fall within the geographic jurisdiction of the Ninth Circuit Court of Appeals, making [Ninth Circuit precedent controlling on all legal questions][17].

The San Francisco Immigration Court handles substantial caseloads from Central America (Guatemala, El Salvador, Honduras, Nicaragua), Mexico and Mexican-American clients, as well as significant numbers of detained respondents held in ICE detention facilities throughout Northern California and the broader region. The court also adjudicates substantial numbers of H-1B visa cases and DACA/Temporary Protected Status (TPS) cases, reflecting the region's tech industry presence and established immigrant communities.

Federal Judge practices within the San Francisco court are known to vary substantially regarding video hearing accommodation. Some immigration judges have demonstrated greater flexibility in granting motions for in-person or remote hearings, while others apply stricter discretionary standards and favor operational efficiency considerations over respondent preferences. Under the current PM 25-25 framework eliminating the presumption favoring accommodation of respondent requests, practitioners should expect greater variation in judge practices and should seek to understand individual judge tendencies regarding video hearings before filing motions in specific cases.

The San Francisco Asylum Office conducts credible fear and reasonable fear interviews for respondents in the region. Interview appointment wait times have varied substantially depending on case backlogs and staffing levels, but respondents can generally expect several months' delay between arriving at the border and conducting a credible fear interview. Asylum officers at the San Francisco office have developed particular patterns and tendencies regarding questioning, interview structure, and credibility assessment that experienced practitioners can leverage in preparing respondents for interviews.

Northern California's distinctive immigration landscape also reflects particular considerations regarding California state criminal law and immigration consequences. [California Penal Code § 1473.7][51], enacted in 2015, provides a mechanism for vacating criminal convictions when conviction counsel failed to advise of immigration consequences or when the advice was erroneous or misleading. [Penal Code § 1203.43][51], amended in 2019, permits judges to dismiss criminal cases after conditions of probation are satisfied, specifically intending to permit relief for individuals whose criminal history creates immigration consequences. [Penal Code § 18.5][51], implementing Proposition 47's sentencing reductions, has been used strategically to reduce conviction severity and thereby mitigate immigration consequences. [Assembly Bill 1352][51], enacted in 2018, requires prosecutors to disclose criminal discovery material sufficiently in advance to permit evaluation of immigration consequences.

Additionally, [California's state law protection under SB 54 (the California Values Act)][51], limits local law enforcement cooperation with federal immigration enforcement in multiple contexts, providing some procedural protections for individuals in custody of state authorities. These state-law protections create strategic opportunities for respondents in Northern California proceedings to address criminal records that might otherwise support removability findings or discretionary denial of relief.

Recent Legislative Developments and Pending Procedural Reform

As of February 2026, substantial congressional attention focuses on immigration court procedures and respondent due process protections. Pending legislation, including the Immigration Court Due Process

Protection Act of 2025 ([H.R. 6521][22][25][28]), specifically addresses due process concerns in video hearings and seeks to codify statutory protections regarding respondent choice in hearing modality.

The legislative landscape reflects recognition among bipartisan groups of Congress that current video hearing policies may systematically disadvantage respondents and that statutory clarification of respondent rights may be necessary. While no such legislation has yet been enacted as of the report date, the introduction and continued advocacy for these measures signals that the current PM 25-25 framework permitting unfettered judicial discretion regarding hearing modality may face legislative constraint.

Practitioners should monitor legislative developments closely, as passage of any measure granting explicit statutory rights to request in-person or remote hearings would directly modify the current discretionary framework. Such legislation would likely require EOIR to revise guidance to immigration judges, potentially reinstating or modifying the presumptions that existed under DM 22-07.

Strategic Decision-Making: Assessment of Modality Options

Determining whether to request video or in-person hearings requires careful analysis of client circumstances, case complexity, available evidence, credibility factors, counsel resources, and judge-specific considerations. The strategic calculus differs substantially for detained versus non-detained respondents.

For Detained Respondents

For respondents held in immigration detention, the current framework presents difficult tradeoffs. Video appearance from the detention facility is often operationally the default, requiring no affirmative motion or preparation. However, the empirical evidence demonstrating ninety percent increased likelihood of applying for relief and thirty-five percent increased likelihood of obtaining counsel in in-person proceedings should inform strategy. If detention facilities are remotely located from the immigration court (common in cases where respondents are detained in facilities in rural areas while their cases are docketed in urban immigration courts), the costs and logistics of transporting a detained respondent to court for in-person proceedings may be prohibitive, making video appearance the practical default regardless of preference.

For detained respondents with complex cases requiring substantial evidence presentation, in-person proceedings should be strongly considered if logistics permit, as the ability to present documents, conduct proper cross-examination, have counsel and respondent in proximity to confer privately, and permit judges to observe demeanor without technological mediation creates fairer proceedings. For detained respondents with straightforward cases or those facing high likelihood of removal absent substantial mitigation, the additional engagement that in-person presence might generate could meaningfully affect outcomes.

For Non-Detained Respondents

For non-detained respondents, the strategic considerations differ. If the respondent resides within reasonable traveling distance of the immigration court (less than one to two hours' drive), in-person proceedings should generally be strongly considered absent compelling hardship factors. The empirical evidence of better outcomes for in-person respondents, combined with the reduced engagement documented in video proceedings, suggests that presence in court carries meaningful strategic value even if it requires respondent effort and cost.

For non-detained respondents residing substantial distances from the immigration court, video proceedings may provide necessary access, particularly if the respondent faces work or family obligations that make court travel impossible. In such cases, respondents should be aware of the research demonstrating reduced

engagement in video proceedings and should compensate by ensuring thorough advance preparation, active participation in hearing planning, and explicit engagement with counsel regarding litigation strategy and evidence presentation.

Judge-Specific Considerations

Practitioners in Northern California should develop detailed information regarding individual judge preferences and practices regarding video hearings. Immigration judges who have issued standing orders or local operating procedures addressing video appearances should be identified. Judges known to favor operational efficiency and reduced travel costs may more readily grant video appearance requests, while judges emphasizing due process and fair proceedings may be more skeptical of mandatory video requirements or more receptive to motions for in-person proceedings.

Practical Implementation Considerations: From Motion Filing Through Hearing Participation

The practical processes for implementing video or in-person proceedings extend beyond motion approval to encompass ongoing coordination with court staff, technology requirements, evidence preparation, and hearing participation logistics.

Technology and Platform Requirements

EOIR has designated Webex by Cisco as its external video conferencing platform for remote hearings.^{[2][34][38][53]} Respondents and counsel appearing remotely via Webex need access to either a computer or mobile device with internet connectivity and audio capability (camera is typically required for video but can be supplemented with audio-only in certain circumstances).^{[34][53]} Courts maintain Points of Contact (POCs) designated at each court to support internet-based hearings and address technical issues in real time.^{[34][53]} Contact information for these POCs is typically available on each court's web page, and practitioners should establish contact with relevant POCs before hearings to address technology questions and ensure smooth participation.

Hearing participants should test technology and connectivity well in advance of scheduled proceedings, ensuring that microphones function clearly, that video transmission is stable, and that any necessary software or browser compatibility has been addressed. The ICPM specifies that immigration judges must confirm that everyone appearing remotely is clearly visible on-screen and that all participants can hear everything that is said.^{[34][53]} If connectivity issues arise before or during hearings, immigration judges should wait a reasonable time to permit reconnection but may proceed only after determining with the court's POC that reconnection is not possible.^{[34][53]}

Evidence Preparation and Submission

Remote proceedings require advance evidence submission and preparation differing from in-person proceedings. For hearings involving multiple documents, certified records, or physical evidence, practitioners must coordinate advance submission with the court to ensure that judges and opposing counsel can access evidence before the hearing. The ICPM notes that immigration judges frequently permit documents to be faxed between parties during video hearings, but this accommodation requires clear advance coordination and assumes document availability at fax-equipped locations.^{[1][35]}

For respondents appearing remotely from detention facilities or other locations, counsel must ensure that respondents have access to copies of critical documents during the hearing. Detention facilities may restrict

document access or limit respondents' ability to retain materials, requiring advance coordination with facility staff to ensure that respondents can review materials and refer to them during testimony.

Attorney-Client Communication and Private Consultation

One critical procedural requirement for video hearings involves ensuring adequate private attorney-client communication during proceedings. For represented respondents, counsel must be able to confer privately with the respondent during recesses and at other times when consultation is necessary for effective representation.[56] For video hearings, this may require that respondent and counsel appear together from counsel's office or another location where private communication is feasible, or it may require that the court provide video technology permitting private counsel-client channels separate from the main hearing broadcast.[34][53]

DM 22-07 explicitly permitted respondents and counsel to appear either together or from different locations, indicating that there is no requirement that they appear together from counsel's office.[34][53] However, if they appear from separate locations, coordination of private communication becomes more challenging and may require advance arrangements with court staff. Counsel should explicitly address attorney-client communication logistics before filing motions or confirming remote hearing participation, ensuring that confidential communication requirements can be met.

Witness Coordination and Presentation

For proceedings involving witness testimony, video technology creates novel coordination challenges. Counsel must determine in advance whether witnesses will appear remotely via video, will appear in person at the immigration court, or will appear in person at alternative locations with video connections to the court. The ICPM provides that immigration judges should accommodate requests for witnesses to appear remotely where such requests are reasonable.[34][53]

For remote witness appearances, counsel must coordinate advance testimony details with witnesses, including technology requirements, timing, and substantive preparation. Interpreters may be required if witnesses are non-English speakers, and video interpretation creates additional coordination challenges. Interpreters appearing remotely may have difficulty managing the dual demands of hearing both the witness and the judge simultaneously, creating potential for misinterpretation or omitted content.

Connectivity Issues, Rescheduling, and Remedies

When participants in internet-based hearings experience connectivity problems, the immigration judge must determine whether to proceed and under what modality. If only video connectivity is lost but audio connectivity remains, the immigration judge may proceed with an audio-only hearing but only if parties consent.[34][53] Immigration judges must bear in mind that effective communication with hearing participants is paramount; accordingly, hearings should be rescheduled where effective communication is not possible due to connectivity issues.[34][53]

For respondents experiencing systemic connectivity problems (e.g., inadequate home internet, detention facility technology limitations), immigration judges may direct that parties appear in person at a rescheduled hearing.[34][53] Importantly, technical issues and the manner in which immigration judges addressed them should be clearly documented in hearing records, as such documentation becomes critical if appellate review of the proceeding is pursued and claims arise that technical problems prevented fair adjudication.

Conclusion: Synthesizing Framework and Strategic Imperatives

The legal framework governing video appearances in immigration court proceedings reflects statutory authorization, administrative discretion, due process limitations, and evolving policy that has recently shifted substantially toward judicial discretion without presumptions favoring respondent preferences. Immigration judges possess broad authority under [8 U.S.C. § 1229a(b)(2)][32] and [8 C.F.R. § 1003.25(c)][21][37] to conduct hearings via video or telephone conference, with limited exceptions applicable to telephonic merits hearings (which require respondent consent) and credible fear determinations (which may be conducted telephonically without consent).[1][32][37]

The evidentiary foundation regarding video hearing outcomes is substantial and consistent: detained respondents appearing virtually are significantly more likely to be deported than similarly situated in-person respondents, primarily through depressed engagement with the legal process (lower counsel retention rates, lower application rates for relief) rather than through harsher judicial decision-making on the merits.[8][27][30] This outcome disparity, combined with research documenting systematic distortion of credibility assessment in video contexts and documented barriers to effective attorney-client communication in remote proceedings, creates substantial due process concerns that remain unresolved in current policy.

The current policy framework, following EOIR PM 25-25's March 2025 rescission of DM 22-07, has eliminated the presumptions that previously favored accommodation of respondent requests for in-person or remote appearances. Immigration judges now possess discretion to determine hearing modality based on operational needs and individual preferences, subject only to statutory consent requirements. This framework creates variability in practice depending on judge assignment, individual judge philosophy regarding operational efficiency versus due process, and local immigration court practices.

For Northern California practitioners, several imperatives emerge from this analysis. First, detailed understanding of individual judge practices and preferences regarding video hearings is essential for developing effective strategy. Early investigation of judge tendencies regarding video hearing motions should inform case planning and motion filing decisions.

Second, for detained respondents with complex cases or substantial mitigation evidence, moving to secure in-person proceedings should be seriously considered despite the logistical challenges, as the empirical evidence documenting better outcomes for in-person proceedings is substantial. Motions should articulate not merely inconvenience but substantial case complexity, credibility issues requiring demeanor observation, or other factors demonstrating why video modality would impair fair adjudication.

Third, for all respondents, the empirical evidence regarding credibility assessment in video proceedings should inform litigation strategy. If credibility will likely be contested and if video modality is proposed or scheduled, respondents should affirmatively consider whether requesting in-person proceedings is warranted. Alternatively, if video proceedings are necessary or unavoidable, respondents should prepare explicitly for the reality that video modality may systematically disadvantage their credibility perception and should compensate by ensuring that corroborating documentary evidence is robust and that testimony is as compelling and specific as possible.

Fourth, appellate strategy should include detailed documentation of technical problems, communication barriers, or other factors that affected video proceedings, as such documentation becomes critical for any subsequent appellate challenges to credibility determinations or hearing fairness. The current appellate deference to credibility assessments is already problematic; the additional distortions created by video modality only increase the importance of comprehensive record development.

Finally, practitioners should monitor the trajectory of pending federal legislation regarding video hearings and

due process protections. The introduction of bills such as H.R. 6521 signals that current discretionary frameworks may face legislative challenge, potentially creating statutory rights that respondents can assert regarding hearing modality choice. Early awareness of such developments permits practitioners to advise clients regarding potential future rights and to position arguments in current proceedings in ways that will withstand any legislative modifications to the governing framework.

The legal and practical landscape governing video appearances in immigration court remains dynamic, with substantial uncertainty regarding whether current judicial discretion will persist or whether legislative or regulatory developments will eventually impose constraints favoring respondent choice or mandating due process protections. Until such developments materialize, Northern California practitioners must work within the current discretionary framework while being cognizant of the substantial empirical evidence demonstrating that video modality systematically disadvantages respondents and while developing sophisticated strategic approaches to either secure in-person proceedings where appropriate or to compensate for video disadvantages through enhanced preparation and documentation when remote proceedings are unavoidable.

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