



Policy Brief: Questions Remain After AILA Joins Laredo Tent Court Tour

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In September 2019, the U.S. Department of Homeland Security (DHS) [opened massive temporary tent facilities](#) in Laredo and Brownsville, Texas that function as virtual immigration courtrooms for [vulnerable asylum seekers subject to Remain in Mexico](#). During the hearings, asylum seekers are held in tents at the ports of entry while judges appear remotely via video teleconference (VTC).

Unlike in other immigration courts, the government has barred attorney observers, press, and the public from hearings at these facilities in violation of [U.S. Department of Justice \(DOJ\) regulations](#) requiring immigration hearings to be open to the public. Access to the tent courts is critical to ensuring due process. [AILA, along with other non-governmental organizations](#) and [members of Congress](#), repeatedly voiced concerns about the lack of transparency.

In December, the *Wall Street Journal* reported that DHS had directed component agencies to open the tent courts to the public.¹ The DHS acknowledgement that transparency is both necessary and required is a first step toward upholding due process in tent courts. On January 24, 2020, at DHS invitation, an AILA delegation attended a tour and briefing of the tent facility in Laredo.

Tent Court Access Prior to December 29, 2019, Public Access Announcement

When DHS opened the tent courts, it allowed entry only for asylum seekers appearing for their cases and their attorneys of record. Representatives from AILA were permitted to observe Master Calendar Hearings (MCH) and Individual Merits Hearings (IH) only at the brick-and-mortar courtrooms where the judges, appearing by VTC, were located. Remote observation is an inadequate substitute for in-person access to the tent courts because observers are not able to assess how the proceedings are operating from the vantage point of the individual respondent.

¹ “In an effort to ensure consistency, clarity, and transparency, the acting secretary directed [component agencies] to formalize guidance for public access to these facilities, consistent with immigration courts across the country.” - DHS spokeswoman, Heather Swift. See Michelle Hackman, *Wall Street Journal*, [U.S. Opens Immigration ‘Tent Courts’ to Public](#), Dec. 29, 2019.

What We Know About Observer Access – After the January 24 Laredo Tent Court Tour

Access to Master Calendar Hearings

As of January 2020, members of the press and public have been permitted to observe MCH at the [Brownsville](#) and [Laredo](#) tent court facilities, in addition to the brick-and-mortar courts where the judges are located. This access has not been consistent with access allowed at other immigration courts across the country. For example, all MCH are generally open to the public, but in the tent courts, DHS personnel dictate which MCH the public is permitted to observe. Additionally, the docket listing which cases will be heard each day is not posted as they are at brick-and-mortar courts. On January 23, AILA staff were permitted access to one of four MCH courtrooms for the morning and afternoon calendars and observed 33 cases. AILA was denied permission to observe the other three MCH rooms and was not provided a reason for the denial.

Access to Individual Merits Hearings²

Individual hearings take place in the tent courts in modified shipping containers that only seat seven people, including respondents, attorneys, interpreters, and facility staff. Reports indicate that some non-lead respondents have not been allowed to enter. Private security staff at the tent courts have repeatedly denied public observers access to IH, even when the attorney and respondent have consented, and space is available. On January 23, AILA was denied observer access to an IH despite AILA having requested such access in advance and obtained attorney and client consent.

At the January 24 tour, DHS officials stated that the January 23 denial was a misunderstanding with their private contractor and that access to IH would be permitted. On January 24, AILA was granted permission to observe an IH. The Immigration and Customs Enforcement, Enforcement and Removal Operations (ICE ERO) representative specified the rules:

1. The observer must have prior consent from the Respondent or Respondent's counsel, if applicable.
2. There must be space available in the merit hearing room (not to exceed 7).
3. The immigration judge must agree.

For people who are unrepresented, DHS stated that due to confidentiality, observers would have to find a way to get pre-approval from the respondent. Furthermore, DHS noted that observers must ask for access into the merits hearing on the day of the hearing and arrive with enough time for the request to be approved by the immigration judge and the tent court staff. AILA asked that DHS provide a mechanism for permission to be granted before the day of the hearing as well as a daily point of contact so that questions about IH access could be resolved.

What We Know About Tent Court Procedures – After the Laredo Facility Tour

Migrant Processing

At the Laredo facility, migrants enter the location from International Bridge I and must arrive four hours prior to their hearing. They are then processed by Customs and Border Protection (CBP). Just inside the walkway, before the migrant is escorted into the facility, there are CBP officers with mobile computers who check people in and verify migrants have court paperwork. At the January 24 tour, CBP stated that even if the migrant has lost or misplaced this notification, they would check to make sure the migrant has a court hearing scheduled for that day.

² In order to observe asylum hearings, court observers need to obtain permission from the Respondent. See [EOIR Immigration Court Practice Manual](#), Chapter 4.9, Public Access.

Next, a contracted physician screens people for infectious disease. Those deemed to have an infectious disease are sent back, and the officer works with EOIR to reschedule the court hearing and give the migrant a new Migrant Protection Protocol (MPP) tear sheet. AILA was not given a list of what types of diseases would merit a rescheduling of a court hearing. There have been [reports](#) of individuals being returned to Mexico for allegedly having lice or for “looking ill.” For those people traveling as a family unit, if one is deemed unfit for court for medical reasons, the entire family is rescheduled and returned to Mexico. When a migrant’s court hearing is rescheduled for medical reasons, CBP stated that a migrant must *affirmatively* express a fear of being returned to Mexico to be scheduled for a *non-refoulement* interview.

Once a migrant clears the initial medical screening, they are escorted by CBP to an intake area where officers with computers check the migrant’s fingerprints and photo from the original MPP processing records. Migrants are told to take their medication out of their bags, and their luggage is x-rayed, tagged, and stored in a designated area to be picked up by the migrant after their court hearing. Migrants are then patted down. Belts and shoelaces are taken by CBP. In this area, there are three multi-purpose rooms designated for pat downs and one-on-one medical assessments.

Next, they are escorted to a pre-hearing waiting area and transferred to the custody of ICE ERO. A Know Your Rights video plays on a loop. AILA was not able to verify what information is provided in this video. AILA asked if a non-governmental organization, such as those which currently contract with EOIR, could be allowed access to provide in-person legal orientation presentations. AILA is awaiting an answer on this question.

There is a designated juvenile waiting room where children can wait for their hearing. In this room, migrants are supposed to be provided a meal in the morning, and a meal in the afternoon, with snacks made readily available. There are no hot meals available, and the afternoon meal consists mostly of sandwiches. From this room people are then escorted to a MCH or IH room.

After the migrants have finished with their hearings, they are returned to the custody of CBP and sent back to the processing waiting room so CBP can return their belongings and coordinate return to Mexico with Mexican government officials. At this time, CBP returns the migrant’s bags, belts and shoelaces, and escort them out of the facility to be turned over to Mexican immigration officials who then process them in accordance to Mexican policies. On the tour, AILA asked whether CBP takes any precautions in coordination with the Mexican government to ensure the safety of people who are returned. CBP responded that they do not take additional precautions. At AILA’s request CBP agreed to take steps to ensure people being returned have time to put shoelaces on so they are less conspicuous to gangs and others who may target them for crime in Mexico.

Laredo Tent Court Hearing Rooms

Master Calendar Hearings are held in large rooms at the Laredo tent court, with DHS contractors managing entry and access and providing court documents such as asylum forms (I-589). Judges and trial attorney’s appear via video teleconferencing from the brick-and-mortar court in San Antonio. The tent court set up, as of January 24, 2020, for master calendar hearings is as follows:

- **Respondents** appear in person in the tent court.
- **Immigration judges** appear via VTC from the brick-and-mortar court.
- **Attorneys of record** can appear either (1) in the tent court or (2) via VTC from the brick-and-mortar court.
- **ICE trial attorneys** appear via VTC from the brick-and-mortar court.
- **Interpreters** appear via VTC from the brick-and-mortar court.

- **Witnesses** appear either (1) in the tent court or (2) via VTC from the brick-and-mortar court.
- **Court observers** are told which MCH room they are to attend. Observers were not allowed to request access to other MCH rooms.

Individual hearings at the tent court in Laredo are being heard by immigration judges at the Fort Worth Adjudication Center (Fort Worth IAC)³, and the San Antonio Immigration Court. The setup is as follows:

- **Respondents** appear in person in the tent court.
- **Immigration judges** appear via VTC from the IAC or San Antonio courtroom.
- **Attorneys of record** appear in the tent court.
- **ICE trial attorneys** appear via VTC from an unknown location or from the San Antonio court.
- **Interpreters** appear in person in the tent court.
- **Witnesses** appear in person in the tent court.
- **Court observers** are to be allowed to watch proceedings based on the rules stated, above.

Laptops and Cellphones

To date, attorneys representing individuals at the tent courts have been prohibited by DHS and the Federal Protective Service (FPS) from bringing into the tent court facility any electronics for master calendar hearings or individual hearings. ICE trial attorneys are allowed to use their computer at all hearings. Without access to laptops and cellphones, attorneys are at a significant disadvantage in their ability to represent their clients. AILA asked that the agencies consider establishing a process by which attorneys could obtain permission to use electronics in the facilities.

Attorney Meeting Rooms and Access to Clients

DHS controls and limits the time attorneys have with their clients prior to both merits and master hearings. DHS stated that it has applied a one-hour time limit for an attorney to meet with a client before the hearing. AILA members have reported that the contractors overseen by ICE ERO frequently limit the attorney-client preparation time to 30 or 45 minutes. AILA requested that additional time be granted upon request. Migrants typically wait in the ICE ERO designated waiting room for several hours prior to the hearing.

Non-refoulement Interviews

During the tour, the USCIS Asylum Office representative stated that all *non-refoulement* interviews are conducted telephonically by an asylum officer. Attorneys are permitted to be present during those interviews. The representative also stated that asylum officers are instructed to allow as much time as needed for the person to describe the circumstances in the case and why the person fears return to Mexico. AILA heard reports that some asylum seekers were rushed through the interview process in about 10 minutes and did not feel they had the opportunity to explain their situation.

³ For more background information about IACs, please see the following materials: [AILA's Policy Brief: FOIA Reveals EOIR's Failed Plan for Fixing the Immigration Court Backlog](#), Feb. 21, 2019 (pgs. 4-5); [The American Bar Association's 2019 Update Report, Reforming the Immigration System](#) (pgs. 81-82); and The American Immigration Council Blog, [The Judicial Black Sites the Government Created to Speed Up Deportations](#), Jan. 7, 2019.

Access at the Fort Worth IAC

DOJ recently began [assigning IH hearings](#) to judges sitting at the Fort Worth Immigration Adjudication Center (IAC). Opened in October 2018, the IAC is a remote-only facility that is [closed to the public and observer access](#). Immigration judges assigned to IACs are adjudicating cases all over the country via VTC. AILA has requested access to the IAC to observe proceedings. AILA is concerned about the use of IAC for Remain in Mexico hearings because observers can only view these hearings at the tent court facilities.

Pending Questions

DHS and DOJ should publish its rules and procedures regarding attorney and observer access to the tent facilities. Below are selected questions that officials were unable to answer at the time of the tour.

- DHS indicated that it has developed formal [guidance](#) on public access to tent court facilities but has not yet shared this guidance publicly. Will DHS share this guidance with the public?
- What steps are DHS and DOJ taking to ensure *meaningful* public access to observe both Master Calendar Hearings and Individual Merits Hearings conducted at the tent court facilities, consistent with access allowed at other immigration courts across the country? Will the agencies establish a procedure for observers to be approved in advance?
- How can attorneys or public observers contact DHS when they are denied access by the private security contractor? Will DHS provide a daily point of contact to resolve questions or dispute about access?
- In situations where immigration judges from an IAC are assigned to adjudicate Individual Merits Hearings at the tent courts, how will DOJ facilitate public access? Does DOJ have plans to open the IACs to the public in the future?
- Does DOJ have plans to use additional IACs to adjudicate MPP cases or tent court cases in the future? Will DOJ grant observer access to IACs?
- Given that DHS attorneys have access to electronic devices at brick-and-mortar courts or other locations, will DHS facilitate access to electronic devices for attorneys representing clients in the tent courts, so as not to create an unfair advantage for ICE trial attorneys?
- Will DHS facilitate access to a Legal Orientation Program or other Know Your Rights presentations in the tent courts given by non-governmental organizations?
- How is DHS determining who will be subjected to Remain in Mexico, and who will be subjected to other policies such as the Prompt Asylum Claim Review, Humanitarian Asylum Review Process, and the Asylum Cooperative Agreements?
- Will DHS provide a mechanism to report people subjected to Remain in Mexico who should qualify for exceptions due to medical conditions, disability, sexual orientation, Mexican nationality, or lack of Spanish fluency?

- Does DHS have plans to open additional tent courts?
- Will DHS grant attorneys representing clients additional time, beyond one hour, to meet privately with clients before and after hearings?
- How many Remain in Mexico respondents have received *non-refoulement* interviews? How many of those people have passed the interview? How will DHS ensure that these interviews provide a *meaningful* opportunity to assess fear of return to Mexico? How will DHS facilitate the submission of evidence during these interviews?