



U.S. Department of Justice

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September 30, 2020

**By ECF**

Hon. John Michael Vasquez  
U.S. District Judge  
Martin Luther King Building & U.S. Courthouse  
50 Walnut Street  
Newark, N.J. 07102

Re: *AILA-NJ, et al. v. EOIR, et al.*  
No. 2:20-9748 (JMV)

Dear Judge Vasquez:

This Office represents Defendants in the above-captioned matter. As the Court is aware, Plaintiffs brought this action and motion for preliminary injunction seeking an order enjoining the Defendant Executive Office for Immigration Review (“EOIR”) from compelling in-person hearings at the Newark Immigration Court without offering an option for videoconferencing. Following oral argument on September 3, 2020, the Court issued an order directing Defendants to submit additional information to the Court by September 18, 2020 and directing Plaintiffs to respond by September 25, 2020. *See* ECF No. 21. On September 17, 2020, Defendants requested on consent, and the Court granted on September 21, 2020, an extension to submit responsive information to the Court’s Order until October 2, 2020. *See* ECF Nos. 29 & 30.

As part of the basis for Defendants’ extension request, Defendants noted that EOIR was exploring the potential implementation of a remote video conferencing option at the Newark Immigration Court, distinct from the video teleconferencing (VTC) platform that EOIR has employed at the Newark Immigration Court for many years. Defendants can now report that EOIR has implemented this new video conferencing option, specifically, Cisco WebEx, at the Newark Immigration Court. WebEx allows hearing participants to connect remotely to individual merits hearings without having to appear in-person at the Court. EOIR has been testing and troubleshooting the WebEx platform over the past two weeks at the Newark Immigration Court, and WebEx has gone live for use in immigration court proceedings this week. Going forward, attorneys seeking a hearing by WebEx should make an appropriate motion to the presiding immigration judge. Attorney members

of Plaintiff, the New Jersey Chapter of the American Immigration Lawyers Association, who have filed adjournment or continuance requests based on concerns over the COVID-19 pandemic have begun receiving WebEx invitations for their hearings, and WebEx hearings have already been conducted this week.

In light of the implementation of WebEx at the Newark Immigration Court, Defendants' position is that this matter is now moot. A case is moot when "the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *United Steel Paper & Forestry Rubber Mfg. Allied Indus. & Serv. Workers Int'l Union AFL-CIO-CLC v. Gov't of Virgin Islands*, 842 F.3d 201, 208 (3d Cir. 2016) quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631, (1979) (internal quotation marks omitted). Indeed, the Plaintiffs previously represented in papers filed in this litigation that that the "Government could . . . moot this action by providing an option for remote videoconferencing proceedings (*i.e.*, granting Plaintiffs the relief they request) . . ." See Plaintiffs' Reply Brief, ECF No. 15, at p. 26 of 45, fn. 6.

The Government has now provided the very relief that Plaintiffs requested. See *id.*; Complaint, ECF No. 1, Prayer for Relief (d) (seeking an order "compelling Defendants to provide attorneys with the option to appear for hearings at the Newark Immigration Court by videoconference"); Declaration of Jason Camilo, ECF No. 15-5 at p. 9 ("EOIR Should Provide Remote Videoconferencing Hearings During this Pandemic"); Declaration of Cesar Estela, ECF No. 16-2 at ¶ 15 ("Most significantly, EOIR has not provided any opportunity for judges, attorneys, litigants, witnesses, and others to appear at Newark Immigration Court hearings for non-detained respondents via videoconferencing"); Declaration of Michael DiRaimondo, ECF No. 6-3 at ¶ 8 ("I ask the Court to require the immigration court to provide a videoconference option like Zoom or other comparable software to allow us to appear from a safe location"); Declaration of Brian O'Neill, ECF No. 6-4 at ¶ 26 ("I ask the Court to require the immigration court to provide a videoconference option, like Zoom or other comparable software, to allow us to appear from a safe location, just like many other courts in New Jersey and across the country have done."); Declaration of Elizabeth Trinidad, ECF No. 6-5 at ¶ 51 ("I ask the Court to require the immigration court to provide a videoconference option, like Zoom or other comparable software, to allow us to appear from a safe location, just like many other courts in New Jersey and across the country have done."); Declaration of Jayson DiMaria, ECF No. 6-8 at ¶ 9 ("Other courts I practice in . . . are conducting virtual hearings that allow parties to participate from their own homes, in a location separate from their attorneys. I do not understand why the Newark Immigration Court is not providing that option"); Supplemental Declaration of Cesar Estela, ECF No. 15-1 at ¶ 10 ("Allowing us to appear for hearings through remote videoconferencing software is a reasonable option that allows us to protect ourselves—as well as our families and communities—while keeping the work of the courts moving forward.").

Because WebEx has now gone live at the Newark Immigration Court, providing an option to appear remotely as Plaintiffs requested, there is no further issue to litigate in this matter. Plaintiffs now have obtained the relief they sought in their complaint and preliminary injunction papers.

Accordingly, and because Plaintiffs have indicated that they refuse to dismiss this matter as moot, Defendants respectfully request that the Court adjourn the October 2 deadline for Defendants to submit responsive information to the Court's Order, and further deny Plaintiffs' Motion for Preliminary Injunction and dismiss Plaintiffs' complaint as moot.

We thank the Court for its consideration.

Respectfully submitted,

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By: /s/ Ben Kuruvilla  
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Assistant United States Attorney

cc: Lawrence Lustberg, Esq. **(By ECF)**  
Michael Noveck, Esq.