



## **Policy Brief: Public Access to Tent Courts Now Allowed, but Meaningful Access Still Absent**

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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 barred attorney observers, press, and the public from accessing these facilities, in violation of [U.S. Department of Justice \(DOJ\) regulations](#) requiring immigration hearings to generally be open to the public. Access to the tent courts is critical to ensuring due process, and [AILA, along with several other organizations](#) and numerous [members of Congress](#), repeatedly voiced concerns about the lack of transparency. In response, and after months of public demand for access, the Wall Street Journal [reported](#) on December 29, 2019, that DHS directed component agencies to open the tent courts to the public.<sup>1</sup>

The DHS acknowledgement that transparency is both necessary and required is a vital first step toward upholding due process in tent courts. However, thus far, DHS and DOJ have operationalized this directive in a way that fails to allow *meaningful* access to the tent court facilities and [imposed new hurdles](#) to transparency by assigning immigration judges from the [Ft. Worth Immigration Adjudication Center](#).

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

When DHS initially opened the tent courts in September 2019, it allowed only asylum seekers and their attorneys of record into the facilities. At one time, even support staff for attorneys of record such as interpreters and paralegals [were restricted](#) from entering the tents, though they were later allowed to accompany the attorneys. Attorney observers, press, and members of the public were categorically barred from the tent facilities while hearings were taking place. Representatives from AILA and other court observers were permitted to observe Master Calendar Hearings and Individual Merits Hearings only at the brick-and-mortar courtrooms where the judges appearing by VTC were located. However, remote observation is not an adequate substitute for 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, who is the most gravely impacted by these proceedings.

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<sup>1</sup> “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.

*Laredo and Brownsville Tent Court Setup from September 2019 through December 2019*

<b>Laredo Tent Court</b>	<b>Brownsville Tent Court</b>
Laredo tent court proceedings, including both Master Calendar Hearings and Individual Merits Hearings, were conducted via VTC by immigration judges located at the brick-and-mortar <a href="#">San Antonio immigration court</a> , which is nearly 200 miles away.	Brownsville tent court proceedings, including both Master Calendar Hearings and Individual Merits Hearings, were conducted by immigration judges located at the <a href="#">Harlingen</a> and <a href="#">Port Isabel</a> immigration courts, as well as the <a href="#">El Paso SPC</a> , which is nearly 800 miles away from the Brownsville tent court.
<ul style="list-style-type: none"> <li>● <b>Respondents</b> appeared in person at the Laredo tent court.</li> <li>● <b>Immigration judges</b> from the San Antonio Immigration Court appeared via VTC.</li> <li>● <b>Attorneys of record</b> appeared either (1) at the Laredo tent court or (2) via VTC from the San Antonio brick-and-mortar courtrooms.</li> <li>● <b>ICE trial attorneys</b> located at the San Antonio Immigration Court appeared via VTC.</li> <li>● <b>Interpreters</b> interpreted remotely from the San Antonio Immigration Court.</li> <li>● <b>Witnesses</b> appeared either (1) at the Laredo tent court or (2) via VTC from the San Antonio brick-and-mortar courtrooms.</li> <li>● <b>Court observers</b> were only permitted to observe Master Calendar Hearings and Individual Merits Hearings at the brick-and-mortar courts</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Respondents</b> appeared in person at the Brownsville tent court.</li> <li>● <b>Immigration judges</b> from Harlingen, Port Isabel, or El Paso SCP appeared via VTC.</li> <li>● <b>Attorneys of record</b> appeared either (1) at the Brownsville tent court or (2) via VTC from the immigration judge location.</li> <li>● <b>ICE trial attorneys</b> appeared via VTC from the immigration judge location.</li> <li>● <b>Interpreters</b> interpreted remotely from the immigration judge location.</li> <li>● <b>Witnesses</b> appeared either (1) at the Brownsville tent court or (2) via VTC from the immigration judge location.</li> <li>● <b>Court observers</b> were only permitted to observe Master Calendar Hearings and Individual Merits Hearings at the brick-and-mortar courts.</li> </ul>

**Tent Court Access After December 29, 2019, Public Access Announcement**

*Master Calendar Hearings*

Reports indicate that members of the press and public have been permitted to observe Master Calendar Hearings at the [Brownsville](#) and [Laredo](#) tent court facilities, in addition to the brick-and-mortar courts where the judges sit. However, this access has not been consistent with access allowed at other immigration courts across the country. For example, Master Calendar Hearings are generally open to the public, but in the tent courts, DHS personnel dictate particular Master Calendar Hearings the public is permitted to observe. Reporters and court observers have encountered other logistical hurdles, such as [DHS prohibiting](#) pens and notepads in the tents, which impede their ability to accurately observe and document the hearings.

*Access to Individual Merits Hearings<sup>2</sup>*

DOJ and DHS recently [imposed significant new barriers](#) that block the public’s ability to observe Individual Merits Hearings taking place at the Laredo and Brownsville tent courts. DOJ recently began assigning individual merits hearings to the Ft. Worth Immigration Adjudication Center (IAC) judges. The Ft. Worth IAC opened in October 2018 and is a remote-only facility that is [closed to the public](#).<sup>3</sup> Immigration judges

<sup>2</sup> 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.

<sup>3</sup> 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](#)

stationed at these centers adjudicate cases from around the country via VTC. The public has not been permitted to observe hearings at the IAC. Previously, court observers have been able to watch IAC proceedings by video in courtrooms where the respondent and ICE attorney are located.

However, reports indicate that DHS has blocked access to Individual Merits Hearings at the tent courts. If that continues, it would mean that there is no location for court observers or the media to watch the Individual Merits Hearings of respondents in tent courts assigned to IAC judges. For example, an AILA member reported earlier this week that DHS prevented her client's adult son who is a lawful permanent resident from attending his mother's Individual Merits Hearing at the Brownsville tent court that was assigned to a judge located at the Ft. Worth IAC. The son was initially permitted to enter the hearing in the tent court because he was listed as a witness in the case. Once the hearing started, the AILA member informed the immigration judge that she did not intend to call the son as a witness and would instead rely on his declaration. Despite empty chairs in the hearing room, security made the son sit in the waiting area for the duration of the hearing because the policy does not permit observers to attend Individual Merits Hearings.

At best, utilizing Ft. Worth IAC immigration judges to adjudicate Individual Merits Hearings at tent courts introduces additional operational complexities. At worst, it will block all public access. See below for more information on how using IAC judges to adjudicate hearings at the tent courts is functioning. AILA is still gathering additional information.

#### ***Merits Hearings at Brownsville Tent Court Adjudicated by IAC Judges***

- **Respondents** appear in person at the Brownsville tent court.
- **Immigration judges** from the Ft. Worth IAC appear via VTC.
- **Attorneys of record** appear at the Brownsville tent court.
- **ICE trial attorneys** from an unknown location appear via VTC.
- **Interpreters** interpret in person at the Brownsville tent court.
- **Witnesses** appear in person at the Brownsville tent court.
- **AILA is still gathering more information on whether DHS and DOJ are taking steps to facilitate court observers' access to these hearings.**

#### **What Don't We Know?**

DHS and DOJ's lack of transparency continues to create chaos for court observers at these two tent courts. Below are a few of the many key outstanding questions regarding access to the tent court facilities.

- 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?
- 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?

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[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.