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December 19, 2003

Michael J. Creppy  
Chief Immigration Judge  
Executive Office for Immigration Review  
5107 Leesburg Pike, Ste. 2400  
Falls Church, VA 22041

Dear Judge Creppy:

I am writing on behalf of the American Bar Association to express grave concern about the tele-video hearings that have recently been implemented at the Port Isabel Service Processing Center (PISPC) in Los Fresnos, Texas. As you are aware, beginning on November 12, 2003, the immigration judge assignments for this facility were changed. One judge is now permanently assigned to the PISPC court and the other three judges are based in the nearby city of Harlingen, and appear through video conference for their detained PISPC dockets. We understand that this new system is causing a multitude of problems for the court, the detainees, and the attorneys. Based on this information, we believe the tele-video hearings should be re-evaluated and that immigration judges should resume in person appearances for individual calendar hearings.

First and foremost, the tele-video hearings may compromise the integrity of the court process. Removal proceedings often carry grave consequences for the respondents, and when a hearing is held through video conference, both the judge and the detainee and his or her lawyers are at a disadvantage. According to our information, the image on the screen is extremely small and the sound often fails. People in court frequently have to shout to be heard and the image is often fuzzy and jerky. In addition, technological problems are common: the video conferencing equipment often shuts off in the middle of the hearing, interrupting detainees' testimony and unduly delaying the proceedings. Moreover, judges in Harlingen sometimes ask the court interpreter to repeat what is being said by

lawyers and respondents at the detention center because the sound quality is so poor. One judge reportedly didn't even recognize an attorney who had appeared before her scores of times.

Furthermore, the detainees are often confused about the respective roles of those on the video and in the courtroom. At these tele-video proceedings, the trial attorneys appear at the detention center, as does a single clerk. Some judges have the interpreter with them in Harlingen, while others allow the interpreter to go to PISPC. Some defense attorneys appear in Harlingen with the judge while others accompany their clients at the detention center. It has been reported to us that many detainees do not understand the respective roles of those in the courtroom, or which of the people on the screen is the judge. Even some represented detainees erroneously believe that the court is not in session and that their hearings have been canceled because the judge is on TV rather than in court. All of these problems are significantly compounded for unrepresented individuals.

Most importantly, tele-video hearings may render it difficult for an immigration judge to make credibility determinations and gauge demeanor. With the immigration judge unable to clearly see the respondent, the image on the screen is a poor substitute for testimony given live. This is a problem especially in asylum hearings and other applications for relief where findings made with respect to an applicant's credibility are often central to the resolution of the claim. The BIA attaches significant weight to the immigration judge's credibility determination, in large part because the immigration judge supposedly has the opportunity to personally observe the applicant's testimony. Only through in-person testimony can the judge observe the respondent's body language, facial expressions, and tone of voice, all necessary elements in determining credibility.

Finally, this new procedure places the respondent's attorney in a difficult position. If the attorney appears with her client, then she gives up the opportunity to interact in-person with the judge. If the attorney appears with the judge, the client's representation may be compromised, because the attorney is unable to privately confer with her client. This creates an obstacle to the provision of full and meaningful legal representation for the detainees.

We understand that this policy was implemented due to budget constraints. However, while these measures may save the government a modest amount in travel expenses, there are additional costs incurred with the new system. First of all, the case files must be sent by Federal Express from Harlingen to the immigration court at the detention center, at a considerable expense. Additionally, for attorneys appearing with their clients at the detention center, legal motions, supporting declarations and documents that are submitted into evidence on the day of the hearing must be faxed from the detention center to the judge in Harlingen. This process adds additional administrative tasks and delays the hearings. In sum, the master calendar hearings have become much longer and draining for the detainees, immigration court personnel and attorneys.

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Since 1996, the numbers of detained individuals has increased significantly. While we understand the benefits that technology can often provide in broadening access to justice, such innovations must not impair due process protections. Hearings by video conference in this instance, with the technological problems being experienced and the special needs of the detainee population on whom it is being imposed, appear to have serious adverse effects on the detainees and the administration of justice. We strongly urge you to reconsider restoring in-person hearings at the Port Isabel Service Processing Center

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans". The signature is written in black ink and is positioned below the word "Sincerely,".

Robert D. Evans