



August 2021

COVID-19

Improvements Needed in Guidance and Stakeholder Engagement for Immigration Courts



A Century of Non-Partisan Fact-Based Work

GAO@100 Highlights

Highlights of [GAO-21-104404](#), a report to congressional addressees

Why GAO Did This Study

Each year, EOIR issues decisions for hundreds of thousands of cases of foreign nationals charged as removable under U.S. immigration law. Approximately 500 immigration judges at 66 immigration courts nationwide determine whether these individuals are removable from the U.S. and, if so, whether they are eligible for any requested relief from removal. During the COVID-19 pandemic, EOIR faced unprecedented challenges adapting its operations to continue its mission.

GAO was asked to review EOIR's management of court operations during the COVID-19 pandemic. This report examines, among other things, (1) EOIR's modifications to court operations and related guidance and (2) EOIR's engagement with court stakeholders.

GAO reviewed EOIR's policies and guidance during the pandemic; and interviewed EOIR headquarters officials and staff at six immigration courts selected to include different dockets and caseloads, among other factors. GAO interviewed stakeholders, such as private bar attorneys representing foreign nationals and attorneys representing the government, proximate to these six courts. GAO also analyzed EOIR caseload data to determine any changes during the pandemic.

What GAO Recommends

GAO is making four recommendations, including that EOIR issue guidance on mask-wearing requirements tailored to the courtroom setting, and regularly engage with court stakeholders. EOIR concurred with the recommendations.

View [GAO-21-104404](#). For more information, contact Rebecca Gambler at (202) 512-8777 or gambler@gao.gov.

August 2021

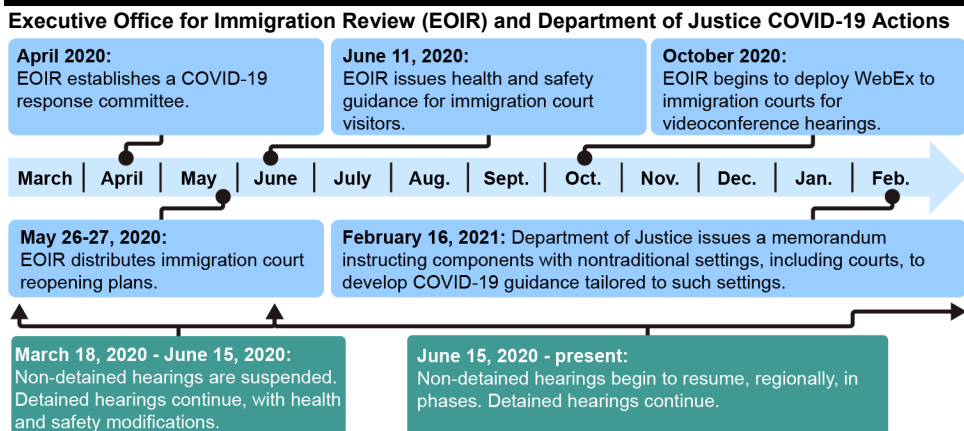
COVID-19

Improvements Needed in Guidance and Stakeholder Engagement for Immigration Courts

What GAO Found

The Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) took steps to modify immigration court operations and guidance to respond to COVID-19. For instance, EOIR implemented health and safety measures at immigration courts, such as requiring social distancing. From mid-March 2020 until mid-June 2020, EOIR also temporarily suspended hearings for individuals not in immigration detention. Immigration courts took other steps to reduce the number of people physically present in EOIR space, such as rotating immigration judges' and staffs' schedules. EOIR data indicate its courts delayed nearly 600,000 hearings from March through October 2020 due to court closures.

Senior EOIR officials told GAO that EOIR expected all those present in a courtroom to wear masks for the duration of a hearing. However, EOIR did not issue mask-wearing guidance tailored to courtrooms—nontraditional office settings, according to DOJ—that articulated this expectation because officials said that DOJ's existing guidance applies to all EOIR space. GAO identified several instances in which judges did not always require or wear masks in their courtrooms. Issuing tailored guidance could help EOIR better ensure that court staff and visitors understand expectations during hearings, particularly as public health guidance evolves.



Sources: EOIR and Department of Justice documentation and interviews. | GAO-21-104404

EOIR did not regularly engage with stakeholders during the COVID-19 pandemic. Stakeholders told GAO that the pandemic highlighted long-standing limitations in EOIR's stakeholder engagement. For example, from fall of 2017 through April 2021, EOIR generally ceased holding regular stakeholder meetings. Stakeholders said these meetings historically provided opportunities for two-way communication with EOIR, which was increasingly important during the pandemic. Stakeholders noted challenges engaging with EOIR on their concerns regarding modifications to court hearing schedules and health and safety matters, such as EOIR's process to respond to COVID-19 exposures. Taking steps to regularly engage with court stakeholders could help EOIR address their concerns about its response to the pandemic and maintain positive relationships in the future.

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Abbreviations

ACIJ	Assistant Chief Immigration Judge
CDC	Centers for Disease Control and Prevention
COVID-19	Coronavirus Disease 2019
DHS	Department of Homeland Security
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
ICE	U.S. Immigration and Customs Enforcement
LOP	Legal Orientation Program
LOPC	Legal Orientation Program for Custodians of Unaccompanied Alien Children
OPLA	Office of the Principal Legal Advisor
PPE	personal protective equipment
Vera	Vera Institute of Justice

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August 31, 2021

Congressional Addressees

Each year, the Department of Homeland Security (DHS) initiates hundreds of thousands of removal cases with the U.S. immigration court system.¹ The Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) is responsible for conducting immigration proceedings to fairly, expeditiously, and uniformly administer and interpret U.S. immigration laws and regulations. EOIR's approximately 500 immigration judges are located in 66 immigration courts across the country. Immigration judges preside over hearings to decide whether respondents—foreign nationals charged as removable due to violation of federal immigration law—should be deemed removable as charged and, if so, granted any requested relief or protection from removal permitting them to lawfully remain in the country.² EOIR's workforce, which totaled approximately 2,000 full time employees as of fiscal year 2020, also includes staff at headquarters and immigration courts (e.g., court administrators). Various other stakeholders are active within the immigration courts in addition to EOIR's workforce. These stakeholders include respondents and their attorneys; attorneys from DHS's Office of

¹DHS is responsible for identifying, detaining, initiating removal proceedings and litigating administrative immigration charges against, and executing removal orders for individuals who are suspected and determined to be in the U.S. in violation of U.S. immigration laws. The term "administrative immigration charges" refers to factual and legal allegations related to removability, associated statutory provisions, and supporting information, included in a Notice to Appear in immigration court, which is the charging document for removal proceedings and which is served on the individual and filed in immigration court. Such charges are based on alleged civil violations of U.S. immigration law, which, if proven, render a charged individual of non-U.S. nationality statutorily inadmissible or deportable and therefore subject to removal from the country unless they obtain relief or protection from removal. See 8 U.S.C. §§ 1182, 1227, 1229, 1229a.

²Throughout this report, we generally use the term "relief" in reference to any form of relief or protection from removal provided for under U.S. immigration law. A foreign national in the U.S. may be removable on statutory grounds of inadmissibility, Immigration and Nationality Act § 212(a), 8 U.S.C. § 1182(a), if they have no prior lawful admission; or deportability, INA § 237, 8 U.S.C. § 1227, if they were previously lawfully admitted. See 8 U.S.C. § 1229a(e)(2). The lawfulness of a prior admission may be at issue in removal proceedings. See 8 U.S.C. §§ 1182(a)(6)(C)(i) (inadmissibility for having fraudulently obtained admission into the U.S.), 1227(a)(1)(A) (deportability for having been inadmissible at the time of entry).

the Principal Legal Advisor (OPLA); and witnesses and family members who may appear or be present during hearings.³

On March 13, 2020, the President declared the Coronavirus Disease 2019 (COVID-19) pandemic an emergency for all states, tribes, territories, and the District of Columbia.⁴ The pandemic has resulted in catastrophic loss of life and generated unprecedented challenges for federal agencies tasked with addressing the pandemic's effects while continuing to carry out their missions. According to data from the Centers for Disease Control and Prevention (CDC), the U.S. had approximately 33 million reported cases and more than 592,000 reported deaths due to COVID-19 as of June 19, 2021.⁵

On March 18, 2020, the same day the President's COVID-19 emergency declaration was published in the *Federal Register*, EOIR suspended hearings for non-detained individuals (i.e., those individuals who are not detained as they await resolution of their immigration court proceedings). A small number of staff in these courts continued to work in person. EOIR generally did not postpone hearings for detained individuals, which have

³OPLA provides specialized legal advice to the Director of the U.S. Immigration and Customs Enforcement (ICE) and represents ICE in all removal proceedings before EOIR. 6 U.S.C. § 252(c).

⁴Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, Pres. Proc. No. 9994, 85 Fed. Reg. 15,337 (Mar. 18, 2020) (issued Mar. 13).

⁵Data on COVID-19 cases in the U.S. are based on aggregate case reporting to CDC and include probable and confirmed cases as reported by states and jurisdictions. CDC's COVID-19 counts are subject to change due to delays or updates in reported data from states and territories. According to CDC, the actual number of COVID-19 cases is unknown for a variety of reasons, including that people who have been infected may not have been tested or sought medical care. CDC's National Center for Health Statistics' COVID-19 death counts in the U.S. are based on provisional counts from death certificate data, which do not distinguish between laboratory-confirmed and probable COVID-19 deaths. Provisional counts are incomplete due to an average delay of 2 weeks (a range of 1–8 weeks or longer) for death certificate processing. The data were accessed on June 23, 2021. Data include deaths occurring from January 2020 through the week ending on June 19, 2021.

historically been deemed an EOIR priority.⁶ In late June 2020, EOIR resumed limited numbers of hearings for non-detained individuals at selected courts across the country, raising questions from Congress and immigration court stakeholders about the health and safety measures in place across these locations during the pandemic.⁷ According to EOIR, 32 of 50 immigration courts with cases for non-detained respondents have resumed hearings, as of April 2021, though at a reduced capacity.

The measures EOIR implemented across immigration courts in response to COVID-19, including the initial suspension of non-detained hearings and other modifications to minimize face-to-face interactions, have affected EOIR's case backlog—that is, the number of cases pending from previous years that remain open. We previously reported that EOIR has faced a significant case backlog.⁸ As of April 2021, EOIR has a backlog of approximately 1.3 million pending cases, according to EOIR data.

You asked us to review EOIR's management of court operations during the COVID-19 pandemic and the effect of its response to health and

⁶While removal proceedings are pending, respondents may be detained in ICE custody or, released on bond, conditional parole, terms of supervision, or other alternatives to detention. The Immigration and Nationality Act, as amended, provides DHS with broad discretion (subject to certain legal standards) to detain, or conditionally release respondents depending on the circumstances and statutory basis for detention. The law requires DHS to detain particular categories of individuals, such as those deemed inadmissible for certain criminal convictions or terrorist activity. See 8 U.S.C. §§ 1225, 1226, 1226a, 1231. EOIR did postpone hearings for detained individuals on a case-by-case basis, such as if the respondent was under quarantine, according to EOIR officials.

⁷In addition, in April 2021, the DOJ Office of the Inspector General issued a report describing the results of a limited scope review of EOIR's handling of operations during the COVID-19 pandemic. The Inspector General's office received a series of complaints beginning in March 2020 from a variety of stakeholders—parties associated with respondents, prosecutors, and EOIR court staff—relating to EOIR's operational decisions during the COVID-19 pandemic, potential exposures to COVID-19 while in EOIR space, and communication from EOIR regarding COVID-19. The Inspector General made nine recommendations to improve EOIR's response to the pandemic such as developing methods to ensure that immigration courts and EOIR offices are following social distancing guidelines and clearly communicating with staff regarding COVID-19. See DOJ Office of the Inspector General, *Pandemic Response Report: Limited-Scope Review of the Executive Office for Immigration Review's Response to the Coronavirus Disease 2019 Pandemic*, 21-063 (Washington, D.C.: Apr. 22, 2021).

⁸GAO, *Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges*, [GAO-17-438](#) (Washington, D.C.: June 1, 2017).

safety challenges on EOIR staff, stakeholders, and caseload.⁹ This report discusses (1) the extent to which EOIR modified operations and guidance for immigration courts in response to the COVID-19 pandemic; (2) the extent to which EOIR communicated and engaged with court stakeholders during the COVID-19 pandemic; and, (3) what EOIR data indicate about immigration courts' caseloads during the pandemic.

This report also provides information on foreign nationals' access to legal services and resources during the pandemic (see app. I).

To address all three objectives, we interviewed court staff and stakeholders at a nongeneralizable sample of six immigration courts in Massachusetts, Maryland, Georgia, Texas, Arizona, and Washington.¹⁰ We selected these immigration courts based on a variety of factors, including court type (whether the court has primarily detained respondents, non-detained respondents, or a mixture); geographic dispersion; and to encompass a range of case backlog sizes.¹¹ Specifically, at each court, we interviewed the Assistant Chief Immigration Judge (ACIJ), court administrator, and two immigration judges. We interviewed two immigration judges to obtain differing perspectives on each judge's experiences during the pandemic and the individual judge's modifications to court protocols in response to COVID-19. At each court location, we used semistructured interview questions to obtain perspectives on (1) each court's modifications to court operations in response to COVID-19, (2) communications and engagement between EOIR headquarters and court staff, and (3) the effects of COVID-19 on the court's caseload.

At each court location, we also interviewed court stakeholders to obtain their perspectives on the health and safety measures EOIR put in place in

⁹We are conducting this work based on your request, as well as oversight authority provided to GAO in section 19010 of the CARES Act, Pub. L. No. 116-136, div. B, title IX, § 19010, 134 Stat. 281, 579-81 (Mar. 27, 2020). We regularly issue government-wide reports on the federal response to COVID-19. For the latest report, see GAO, *COVID-19: Continued Attention Needed to Enhance Federal Preparedness, Response, Service Delivery, and Program Integrity*, [GAO-21-551](#) (Washington, D.C.: July 19, 2021). Our next government-wide report will be issued in October 2021 and will be available on GAO's website at <https://www.gao.gov/coronavirus>.

¹⁰Due to COVID-19, we conducted these meetings by teleconference.

¹¹For the purposes of this report, the case backlog is the number of pending cases by fiscal year.

response to COVID-19 and EOIR's communications and engagement during the COVID-19 pandemic. Specifically, we interviewed two to four attorneys representing the government and two to four private bar attorneys representing respondents at the court at each location. We selected private bar attorneys by first consulting with EOIR's published list of private bar organizations that provide attorneys to represent respondents at different immigration courts. When we could not reach respondents' representatives through EOIR's published list, we consulted with the American Immigration Lawyers Association to connect us with private bar attorneys in a specific court location.¹² While the information we obtained from these interviews with court stakeholders at selected immigration courts cannot be generalized to all immigration courts, it provides valuable perspective into EOIR's response to COVID-19 and the modifications to immigration court operations in those locations.

To address our first objective, we reviewed EOIR's guidance and policies for COVID-19 health and safety requirements. We interviewed officials responsible for developing and managing EOIR's response to the pandemic, including members of the EOIR COVID-19 Response Committee and other senior EOIR officials. These officials represented various EOIR headquarters offices, to include the Office of Policy, the Office of the Director, Office of the General Counsel, the Office of the Chief Immigration Judge, and the Office of Information Technology.

During these interviews, we discussed actions that EOIR took to respond to COVID-19, health and safety requirements for the immigration courts, and guidance that EOIR developed and disseminated to immigration courts. We also spoke with ACIJIs, court administrators, and immigration judges to determine the actions they took at selected immigration courts to modify operations during the COVID-19 pandemic, including any actions to address the health and safety of those present at these immigration courts. In addition, we interviewed private bar attorneys and OPLA attorneys at these locations to determine how external stakeholders adapted to modified operations at these immigration courts.¹³ We compared this information against *Standards for Internal*

¹²The American Immigration Lawyers Association is a national association of more than 15,000 attorneys and law professors who practice and teach immigration law. Member attorneys represent respondents at immigration courts nationwide.

¹³OPLA is to provide specialized legal advice to the Director of ICE, and represent ICE in all removal proceedings before EOIR. 6 U.S.C. § 252(c). OPLA is within DHS's Office of the General Counsel and is funded under ICE's Operations and Support account.

*Control in the Federal Government.*¹⁴ Specifically, we determined that documentation requirements of internal control standards were significant to this objective and assessed EOIR's documentation on its operations and guidance in response to the pandemic, particularly related to mask-wearing in courtrooms and guidance on how to respond to COVID-19 exposures. We also compared this information against mask-wearing guidance described in DOJ's February 2021 *COVID-19 Workforce Safety Plan*.¹⁵

To address our second objective, we reviewed EOIR documentation on its communication policies with court staff and stakeholders, including position descriptions for EOIR staff that focus on external communications with court stakeholders and the public. We analyzed documentation of internal EOIR communications (e.g., emails and newsletters) and external communications (e.g., EOIR's and courts' websites and social media posts). From these documents, we identified the information that EOIR provided to internal staff and external stakeholders on pandemic-related events, such as closing courts and postponing hearings, and its policies and guidance to immigration court staff and stakeholders on health and safety measures for COVID-19 and modifications to court operations.

In addition, we interviewed EOIR headquarters officials responsible for overseeing EOIR's internal and external communications and stakeholder engagement. We also spoke with representatives from private bar organizations, as well as the national immigration judge union, to obtain their perspective on EOIR's communication and engagement prior to and during the COVID-19 pandemic.¹⁶ We compared EOIR's policies and procedures for communicating and engaging with stakeholders to federal internal control standards related to management of communications with external parties.¹⁷ We also compared EOIR's practices to engage with

¹⁴GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

¹⁵Department of Justice, *2021 Department of Justice COVID-19 Workforce Safety Plan* (Washington, D.C.: Feb. 16, 2021).

¹⁶Subsequent to our meeting with the immigration judges union, the Federal Labor Relations Authority issued a decision on November 2, 2020 that immigration judges are to be considered management officials and, therefore, excluded from participating in any bargaining units.

¹⁷[GAO-14-704G](#).

stakeholders to guidance on key considerations for making reentry decisions when returning federal employees to workplaces during pandemics.¹⁸ We also referred to our prior work on collaboration.¹⁹

To address our third objective, we obtained and analyzed monthly data on EOIR's caseload from October 2018 through October 2020. This time frame represents the most recent two fiscal years of data maintained by EOIR's data system at the time of our review, with one additional month of data on the caseload during the pandemic.²⁰ Specifically, we analyzed the following data: pending cases; immigration judge decisions, including *in absentia* decisions; hearing adjournments, including for continuances due to court closures, completions at or prior to the hearing, or other reasons; and case receipts.²¹ We analyzed these data nationwide by court type—detained, non-detained, and hybrid. EOIR provided data to us in the unit of “base cities,” or cities where immigration courts are located or nearby. We followed EOIR's categorization of court types by base

¹⁸GAO, *Federal Workforce: Key Considerations for Agencies Returning Employees to Workplaces During Pandemics*, [GAO-20-650T](#) (Washington, D.C.: June 25, 2020).

¹⁹GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sept. 26, 2012).

²⁰We requested and received data in two sets to help ensure that EOIR had sufficient time to enter and update data as needed: fiscal year 2018 through July 2020, which we received in October 2020, and January 2020 through October 2020, which we received in January 2021.

²¹Pending cases are open cases without resolutions; immigration judge decisions are instances in which an immigration judge rules on the outcome of a case; immigration judge decisions *in absentia* are instances in which a respondent does not appear for a scheduled court hearing and the immigration judge rules on the outcome of a case; hearing adjournments are entered on a number of bases, including continuances under various circumstances, case completions at or prior to hearing, and instances in which the date of a hearing was entered incorrectly and could not be rectified, among other reasons; a continuance is a temporary adjournment or postponement of a case until a later date, for good cause, see 8 C.F.R. §§ 1003.29 (Continuances), 1240.6 (Postponement and adjournment of hearing); continuances due to court closures are the resetting of hearings from one date to another due to court closures. According to EOIR officials, the majority of continuances due to court closures from March 2020 through October 2020 are attributable to COVID-19. Case receipts are new cases submitted to immigration courts.

cities where immigration courts are located.²² To assess the reliability of EOIR's caseload data, we reviewed related documentation—including EOIR's data system manual and guidance for specific codes—and conducted testing for obvious data errors. We also interviewed officials knowledgeable about how EOIR staff entered and maintained the caseload data. We determined the data were sufficiently reliable for the purposes of describing EOIR's caseload during from October 2018 through October 2020.

We conducted this performance audit from June 2020 to August 2021 in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Immigration Court System Roles and Structure

EOIR has 66 immigration courts nationwide.²³ Immigration courts may be co-located with a detention facility or a correctional facility, or located within federal buildings managed by the General Services Administration—the federal agency responsible for managing federal property, or a privately owned building. The Office of the Chief Immigration Judge, located in EOIR headquarters, oversees the immigration courts nationwide, articulates operating policies and procedures, and establishes priorities applicable to the immigration courts. This office—with approximately 500 immigration judges—is headed by a Chief Immigration Judge. One Principal Deputy Chief Immigration Judge and two Regional Deputy Chief Immigration Judges

²²A base city categorized as detained is comprised of at least 95 percent of cases completed in the last year in which respondents were detained. A base city categorized as non-detained is comprised of at least 95 percent of cases completed in the last year in which respondents were not detained. A base city that did not meet either of these criteria is a hybrid base city, which has a combination of both detained and non-detained respondents. For the purposes of this report, we refer to these locations as immigration courts.

²³In addition, EOIR has a centralized Board of Immigration Appeals at its headquarters, which primarily decides upon appeals of immigration judge decisions submitted by respondents or DHS. EOIR also has three immigration adjudication centers—in Virginia and Texas—where immigration judges preside over hearings via videoconferencing for respondents located in other locations across the country.

assist the Chief Immigration Judge, as well as 39 ACIJ positions located across the courts. See table 1 for a description of roles for selected EOIR immigration court staff.

Table 1: Roles for Selected Executive Office for Immigration Review (EOIR) Immigration Court Staff

Role	Position description
Assistant Chief Immigration Judge (ACIJ)	Principal liaisons between the Office of the Chief Immigration Judge at EOIR headquarters and the immigration courts nationwide, with supervisory authority over immigration judges, court administrators, and judicial law clerks. An ACIJ is generally located in proximity to the court(s) under their supervision, and one ACIJ may supervise immigration judges across multiple courts and states.
Immigration judge	Responsible for exercising their independent judgment and discretion in determining whether respondents are removable and eligible for any requested (discretionary or mandatory) relief or protection from removal.
Court Administrator	Manages daily court operations, as well as the court's administrative staff, which includes clerical and technical staff, staff interpreters, and legal assistants.
Interpreter	The U.S. government provides interpreters for respondents and witnesses whose command of the English language is inadequate to fully understand and participate in removal proceedings. Immigration courts use staff interpreters employed by the immigration court, contract interpreters, and telephonic interpretation services.
Legal staff	Each immigration judge is supported by several legal staff, including attorney-advisors and judicial law clerks, whose responsibilities include research and other legal support.

Source: GAO summary of EOIR information. | GAO-21-104404

EOIR classifies its immigration courts into one of three categories—detained, non-detained, or hybrid. A detained court is one where cases with detained respondents comprise at least 95 percent of cases completed in the last year. A non-detained court is one where cases with non-detained respondents comprise at least 95 percent of cases completed in the last year.²⁴ EOIR classifies any court that does not meet the thresholds for either the detained or non-detained court as a hybrid court. Hybrid courts generally have a combination of cases with both

²⁴EOIR may also consider a court to be non-detained if less than 95 percent of initial case completions in the last year have a custody status of detained, and more than 90 percent of detained cases are in the Institutional Hearing Program. The Institutional Hearing Program is coordinated between EOIR and DOJ's Bureau of Prisons in partnership with ICE. As part of the program, ICE identifies federal inmates who may be removable from the U.S. and initiates their removal proceedings before an immigration judge. Bringing immigration judges to these inmates for a determination of their removability allows their immigration case to be resolved prior to their release from federal prison.

detained and non-detained respondents. As of June 2021, EOIR had 38 hybrid courts, 20 detained courts, and 10 non-detained courts.²⁵

Overview of the Immigration Court Process

DHS commences formal removal proceedings for an individual by filing a Notice to Appear—the charging document—in immigration court and serving it to the respondent. In the document, DHS provides written notice of the administrative immigration charges against the allegedly removable respondent and other related information. The Notice to Appear orders the respondent to appear before an immigration judge to respond to listed removal charges. In addition to the specific charges, the notice is to include the nature of the proceedings against the individual, the acts or conduct alleged to be in violation of law, that the individual may be represented by counsel, and the date and time of the first hearing of the removal proceedings, among other items.²⁶

Immigration court staff then schedule the master calendar hearing and assign the case to a judge's docket.²⁷ During the initial master calendar hearing, the immigration judge provides information to respondents of their rights in removal proceedings and an opportunity for the respondent to admit or deny the charge(s). OPLA attorneys represent the U.S. government by providing civil litigation services to ICE in removal proceedings before EOIR. Respondents may choose to retain legal counsel (e.g., a private bar attorney) to represent them during immigration proceedings at no expense to the government.²⁸ Respondents may also choose to represent themselves without legal counsel.

At the master calendar hearing, issues of removability are generally resolved by the respondent conceding removability or the immigration judge otherwise determining that the respondent is removable. The respondent may then identify the form(s) of relief or protection from removal they will be seeking. The immigration judge schedules a merits hearing where removability remains unresolved or a removable respondent applies for relief. During a merits hearing, the immigration

²⁵EOIR also had three immigration adjudication centers.

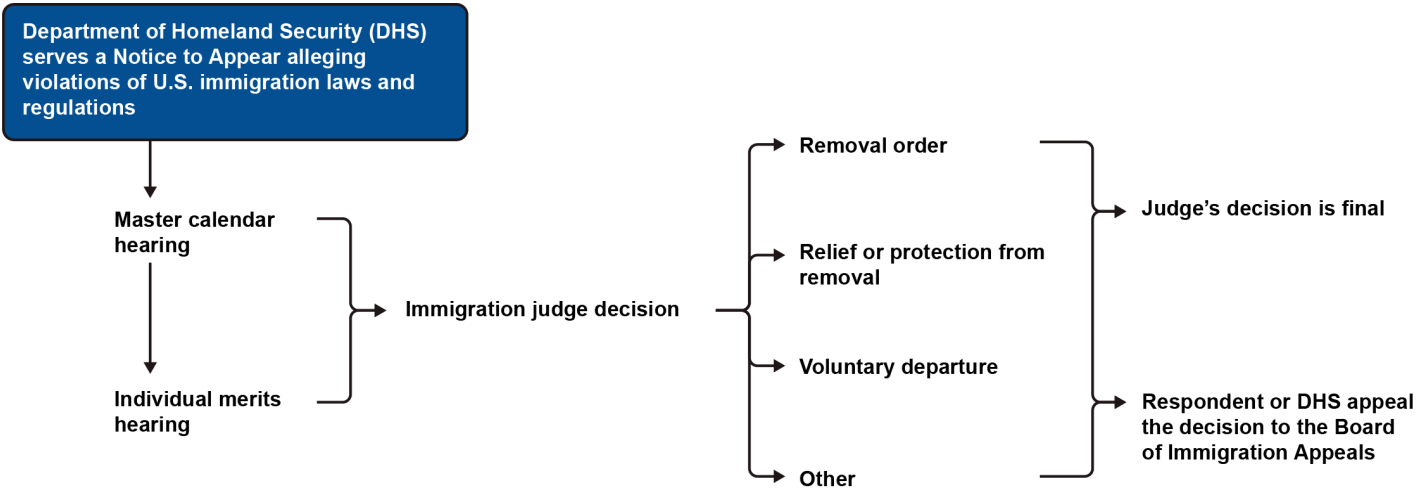
²⁶8 U.S.C. § 1229(a)(1).

²⁷The Notice to Appear may not contain the date, time, and location of the initial master calendar hearing, and the court will mail a notice of hearing with this information at a later date.

²⁸8 U.S.C. § 1362.

judge may hear arguments as to removability, if still at issue, and any claims for, and OPLA opposition to, relief or protection from removal. Immigration judges also may hear testimony and review documentary evidence from the respondent and any other witnesses. The judge must then consider whether the respondent satisfies the applicable eligibility criteria for any requested relief. The judge may ultimately grant such relief or issue an order of removal without any associated relief, among other outcomes. An immigration judge may issue *in absentia* orders of removal for respondents who fail to attend a scheduled hearing.²⁹ Figure 1 describes the general process for removal proceedings in immigration courts.

Figure 1: Steps in Immigration Court Removal Proceedings Process



Sources: Executive Office for Immigration Review documentation. | GAO-21-104404

Note: In this figure, a “Removal order” is not entered in conjunction with any relief or protection from removal; and “Relief or protection from removal” refers to any form of relief which permits the respondent to lawfully remain in the U.S. “Other” outcomes include administrative closures, termination or dismissal of proceedings, and withdrawal of application for admission.

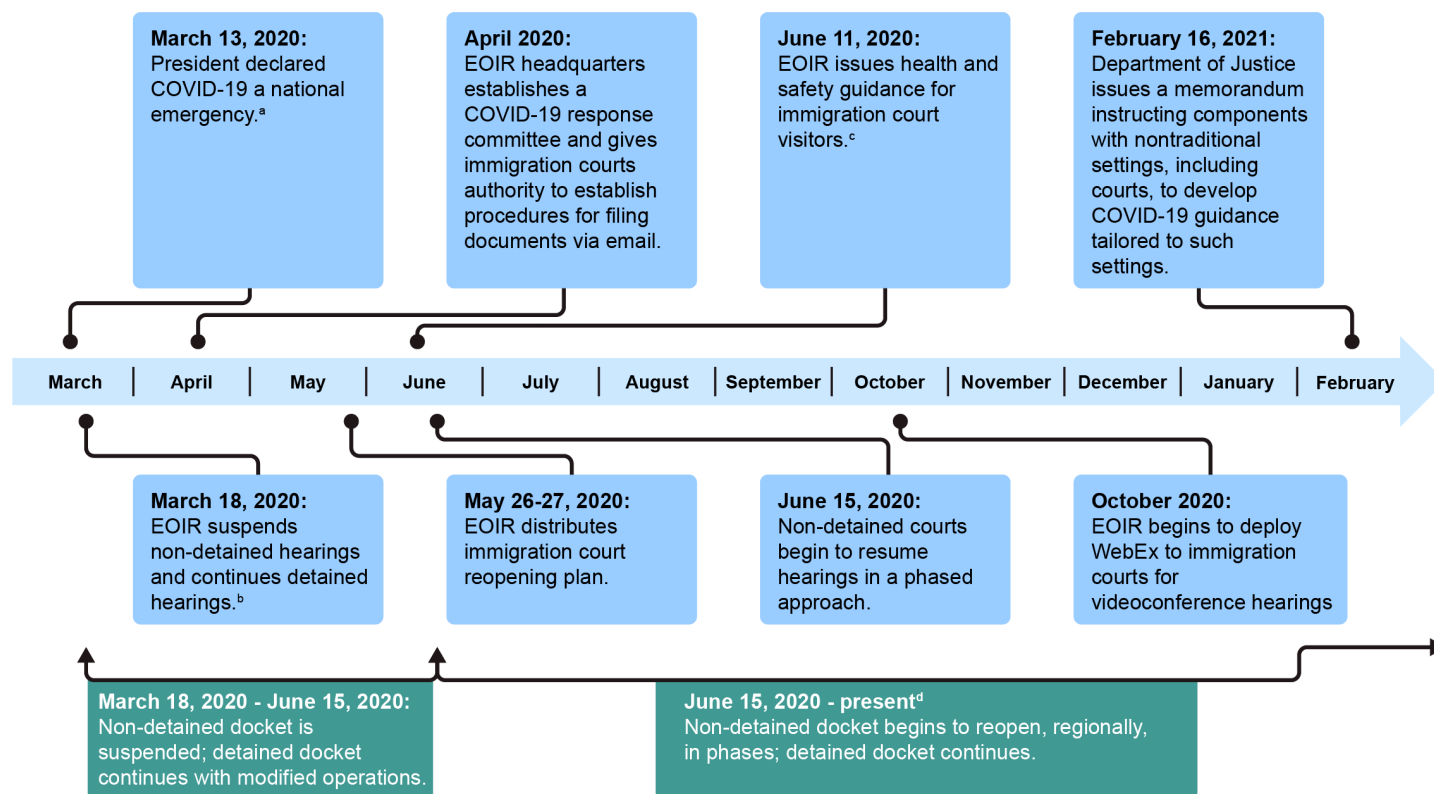
²⁹8 U.S.C. § 1229a(b)(5)(A).

EOIR Modified Operations to Address Health and Safety Needs but Lacks Certain Guidance for Staff

EOIR Modified Operations during the COVID-19 Pandemic to Help Ensure the Health and Safety of Court Staff and Visitors

EOIR took several steps in response to the pandemic to adapt its operations and help address court stakeholders' health and safety needs. This includes initially suspending the non-detained docket and instructing courts to take measures to social distance and procure personal protective equipment such as masks. See figure 2 for a time line of actions EOIR took in response to COVID-19 from March 2020 to early 2021.

Figure 2: Time Line of Selected Executive Office for Immigration Review (EOIR) Actions to Respond to COVID-19



Source: EOIR and Department of Justice documentation and interviews. | GAO-21-104404

^aDeclaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, Pres. Proc. No. 9994, 85 Fed. Reg. 15,337 (Mar. 18, 2020) (issued March 13).

^bEOIR Office of the Director, *Policy Memorandum 20-10, Immigration Court Practices During the Declared National Emergency Concerning the COVID-19 Outbreak* (Falls Church, VA: Mar. 18, 2020).

^cEOIR Office of the Director, *Policy Memorandum 20-13, EOIR Practices Related to the COVID-19 Outbreak* (Falls Church, VA: June 11, 2020).

^dAs of the date of publication, immigration courts were still reopening in phases.

EOIR Initially Instructed Detained Courts to Follow CDC Guidance from March through May 2020

From March to late May 2020, prior to issuing its own comprehensive health and safety guidance for immigration courts, EOIR headquarters officials told us that they met weekly with ACIJTs to develop procedures to operate safely. Additionally, EOIR instructed detained courts to check CDC guidance on COVID-19 and modify operations consistent with that

guidance as it evolved.³⁰ EOIR headquarters officials told us that from March to late May 2020, guidance was evolving as more information became known about COVID-19 and how it is primarily transmitted, which made developing guidance for all immigration courts difficult. For example, the CDC recommended mask-wearing in early April 2020, reversing prior guidance to the public.

ACIJIs, immigration judges, and court administrators at three detained courts co-located with ICE detention facilities told us they took measures early in the pandemic, with support from EOIR headquarters, to help ensure the health and safety of EOIR court staff, court stakeholders, and any visitors based on each court's individual circumstances and resources. These measures included social distancing, procuring personal protective equipment (PPE), developing enhanced sanitization practices, offering different types of leave, and modifying the courts' document filing practices.

- **Social distancing.** ACIJIs and court administrators we spoke with at the three detained courts included in our analysis told us they implemented social distancing methods.³¹ For example, at one detained court, immigration judges moved to other nearby non-detained courts that were closed at the time and presided over hearings via video teleconference from those courts. In those cases, respondents participated via video teleconference from the courtrooms in the detained court co-located with their detention facility. Further, officials we interviewed at the three detained courts told us that immigration judges eventually allowed telephonic appearances for proceedings so that private bar attorneys and OPLA attorneys could appear virtually. Courts and judges at these detained courts instituted telephonic appearances on differing dates. For example, the first immigration court allowed telephonic appearances for attorneys beginning on March 20, 2020; the second allowed telephonic appearances for attorneys beginning on March 24, 2020;

³⁰As of April 2020, CDC guidance recommended mask-wearing, social distancing, hand washing, cleaning and disinfecting frequently touched surfaces, restricted visitor access, and extended telework.

³¹We interviewed court staff and stakeholders at a nongeneralizable sample of six immigration courts in Massachusetts, Maryland, Georgia, Texas, Arizona, and Washington. Three of these courts were detained courts; the remaining three were hybrid courts.

and the third allowed telephonic appearances for attorneys beginning on April 24, 2020.³²

- **PPE.** According to EOIR headquarters officials and court staff we interviewed, procuring PPE in the spring of 2020 was challenging because the U.S. faced national shortages for items such as hand sanitizer and face masks. EOIR staff with whom we spoke at the three detained courts provided examples of how they procured their own sanitizer or made their own cloth masks. For instance, in one location, the ACIJ told us that an immigration court staff member made cloth face masks for everyone at the court. EOIR staff we spoke to across the six immigration courts included in our analysis told us that the courts procured their own hand sanitizer for staff, when available.
- **Sanitizing.** EOIR headquarters officials stated that they do not expect or require immigration court staff to engage in any cleaning or sanitization of immigration court space. They noted that, if additional cleaning is needed, EOIR headquarters would coordinate with immigration court building management to assign professional cleaners. In our interviews with court staff, they discussed additional sanitization measures they took, particularly early in the pandemic. For example, court administrators at two detained courts told us they established procedures in their respective immigration courts to sanitize EOIR space. For example, according to the two court administrators, one arranged for the cleaning staff at the co-located ICE detention facility to sanitize EOIR's courtrooms between hearings. The other court administrator told us that immigration court staff elected to develop a daily schedule where they sanitized high-touch surfaces, such as doorknobs.
- **Leave options.** EOIR headquarters offered administrative leave for staff who lost childcare, and offered weather and safety leave for staff with underlying health conditions that increased their risk of serious

³²At the third court, individual immigration judges had varying procedures and allowances for telephonic appearances for attorneys until April 24, 2020, when the court issued guidelines for telephonic appearances to cover all proceedings. Immigration courts and judges issued standing orders to establish and communicate modifications to individual judge practices, or local court operating procedures due to COVID-19 to stakeholders, respondents, and the public. OPLA headquarters officials told us that at some courts, immigration judges never allowed telephonic appearances during the COVID-19 pandemic. In those instances, OPLA attorneys had to appear in court in person. Consistent with DOJ regulations prior to and during the pandemic, attorneys can submit individual motions to appear telephonically, which immigration judges could grant or deny, depending on the relevant facts, and exercising their independent judgement and discretion. 8 U.S.C. § 1229a (Removal proceedings); 8 C.F.R. §§ 1003.0 (Executive Office for Immigration Review), .10 (Immigration judges), .17 (Appearances), .25 (Form of the proceeding), .40 (Local operating procedures).

illness with COVID-19. Staff can use weather and safety leave if a condition prevents them from safely traveling to or performing work at an approved location. EOIR began to offer weather and safety leave to all staff in March 2020, according to officials. One immigration judge with an underlying health condition who took public transportation to work took weather and safety leave until he received an official laptop that enabled him to telework, according to the judge.

- **Telework.** Immigration judges and other court staff had the option at times to telework during the pandemic, depending upon factors such as access to official laptops and electronic files or the need to process hard copy case files in person. EOIR officials said that immigration judges typically ruled on motions and conducted other administrative work when teleworking. According to EOIR headquarters officials, immigration judges generally cannot conduct hearings while teleworking since the digital audio recording technology that EOIR uses during hearings is not available for telework.³³ Some court staff, such as legal assistants, could conduct regular duties during telework—such as research, legal analysis, and preparing legal documents—according to court officials. One court administrator noted that the court’s clerical staff had limited telework opportunities due to the need to process a large number of hard copy case files in person.
- **Case filing options.** Court administrators we spoke with at the three detained courts told us they modified processes for stakeholders (e.g., private bar or OPLA attorneys) to reduce physical interactions when filing hard copy documents with the immigration court. For example, in one detained court location, the court administrator told us that court staff picked up hard copy filings in the court’s parking lot so that attorneys would not have to enter the ICE detention facility with which the immigration court was co-located. EOIR staff at the three detained courts we spoke with told us their courts had options for filing documents electronically for a limited time. OPLA or private bar attorneys at the six immigration court locations included in our analysis—including non-detained courts—told us they had options for electronic filing. Private bar or OPLA attorneys from five locations with email filings said that they took advantage of the option to file documents electronically. The sixth location conducted filings through and relied on the EOIR Courts and Appeals System, EOIR’s

³³EOIR officials told us that immigration courts may use WebEx to enable immigration judges to conduct hearings while teleworking.

EOIR Headquarters
Established a COVID-19
Response Committee in April
2020

electronic filing system.³⁴ EOIR continued to deploy this system to additional immigration courts during the pandemic.³⁵

In addition to the modifications that individual courts implemented early in the pandemic, EOIR formally established a COVID-19 response committee in April 2020, comprised of senior EOIR headquarters officials.³⁶ EOIR officials told us that they started meeting weekly in early March 2020 to respond to COVID-19, but formally established the committee in April 2020. This committee is to oversee EOIR's response to the pandemic, including evaluating external guidance from sources such as the CDC and DOJ and applying that external guidance to EOIR operations, as appropriate. In addition, the committee is to maintain information on immigration courts' operational status. Members of the COVID-19 response committee at EOIR headquarters also make decisions regarding how to respond to any such exposures in the courts.

According to EOIR documentation and officials, when an ACIJ learns that an individual in EOIR space in an immigration court is symptomatic of or positive with COVID-19, the ACIJ is to work with members of the COVID-19 response committee to respond.³⁷ First, the ACIJ is to send an incident report form to the committee containing information on whether the individual received a positive COVID-19 test, which symptoms the

³⁴EOIR placed certain limits on email filings, such as page limits, that often presented other challenges, according to private bar and OPLA attorneys. EOIR headquarters deactivates these email filing inboxes 60 days after immigration courts resume non-detained hearings by federal judicial district, according to EOIR policy. For example, if a hybrid court resumes non-detained hearings, EOIR headquarters may deactivate email filing 60 days after the resumption of non-detained hearings for all immigration courts in that same judicial district.

³⁵As of March 2020, 14 immigration courts had deployed the EOIR Courts and Appeals System; as of March 2021, 47 immigration courts had deployed it. However, noncitizens cannot be served through the system, and OPLA attorneys continue to employ paper filings in some instances, according to OPLA.

³⁶These officials include the Acting Deputy Director for EOIR and representatives from the Office of Policy, the Office of the Director, Office of the General Counsel, the Office of Administration, the Office of the Chief Immigration Judge, and the Office of Information Technology.

³⁷For the purposes of this report, EOIR space refers to several areas, including staff offices, conference rooms, a lobby, filing window, elevator lobbies, judges' chambers, and courtrooms. EOIR space is typically located within a federal building managed by the General Services Administration, privately owned building, or within ICE detention facilities.

individual exhibited, where the individual traveled within EOIR space, and whether the ACIJ has identified any close contacts.³⁸

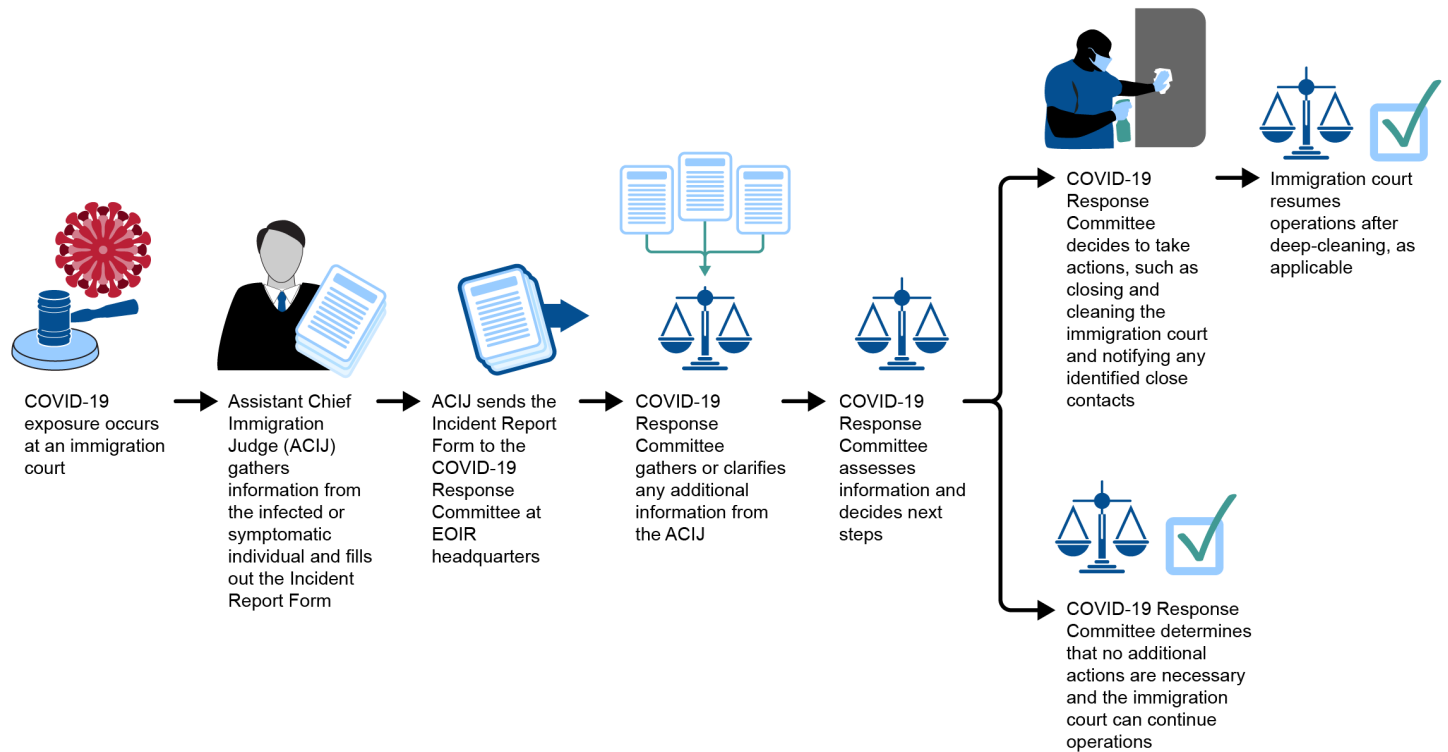
Then, the COVID-19 response committee decides whether to close and clean the immigration court, or take any other necessary actions. EOIR headquarters officials told us they coordinate with the General Services Administration to arrange deep-cleanings for immigration courts located within federal buildings. For those immigration courts that are co-located with ICE detention facilities, EOIR headquarters officials told us they coordinate with the facility's management should EOIR need to arrange deep-cleanings of its space within the facility, or take other actions.³⁹

Based on the information that ACIJs provide, the committee also decides whether any EOIR court staff or contractors should quarantine following a COVID-19 exposure. If the committee decides that a deep-cleaning is necessary, then the court can resume operations after the cleaning is completed. Lastly, the ACIJ is responsible for notifying any known close contacts and asking them to undertake a quarantine period or to obtain a test for COVID-19, consistent with the committee's decision regarding the specific exposure. See figure 3 for more information on EOIR's process for responding to COVID-19 exposures at immigration courts.

³⁸As of October 2020, EOIR defines close contact as anybody who was within 6 feet of the individual in question for a total of 15 minutes over a 24-hour period.

³⁹EOIR's deep-cleanings are consistent with CDC's guidelines for cleaning and disinfecting, according to EOIR officials.

Figure 3: Executive Office for Immigration Review's (EOIR) Process for Responding to COVID-19 Exposures at Immigration Courts



Source: EOIR documentation and interviews. | GAO-21-104404

EOIR Distributed Reopening Plans in May 2020 and Began Reopening Non-Detained Courts with Modified Operations in June 2020

In April 2020, EOIR began developing reopening plans for all immigration courts, according to EOIR headquarters officials, and distributed the final plans to all detained and non-detained immigration courts in late May 2020. The reopening plans include guidance to all immigration courts on processes for deep-cleaning, social distancing, procuring PPE, teleworking, and media and public access. The plans also include court-specific instructions such as floorplans and maximum capacities for courtrooms. One ACIJ from a hybrid court stated these plans provided helpful information that guided the court's preparations and procedures when the court resumed non-detained hearings on a limited basis. In addition to these plans, EOIR headquarters sent signage to immigration courts to post throughout EOIR space, which reiterated social distancing and mask-wearing requirements. Officials from the six immigration courts included in our analysis told us that the immigration courts posted the signage and blocked off seating in courtrooms to comply with social distancing floorplans provided in the reopening plans.

EOIR began resuming some non-detained hearings on June 15, 2020, based on DOJ's phased reopening process. Through this process, according to DOJ documentation, the department's Justice Management Division is to work with the Executive Office for U.S. Attorneys and regional U.S. Attorney's Offices to determine when specific judicial districts are to enter new phases of reopening. DOJ's Justice Management Division is to notify EOIR when an immigration court can enter a new phase of reopening, based on the division's coordination with the Executive Office for U.S. Attorneys and the respective U.S. attorneys across the country, according to EOIR officials. DOJ uses this process as of June 2021, according to officials. According to EOIR headquarters officials, after receiving word from DOJ, EOIR headquarters typically gives immigration courts about 2 weeks of preparation time before entering a new phase of reopening.⁴⁰ According to EOIR headquarters officials, in the first phase of reopening, non-detained courts resumed a limited number of merits hearings. In the second phase of reopening, officials stated that some non-detained courts resumed a limited number of master calendar hearings in addition to merits hearings.

Detained, hybrid, and non-detained immigration courts made several other modifications throughout 2020 to reduce the number of people physically present in EOIR space, and to facilitate social distancing. As recommended in the reopening plans, the six immigration courts included in our analysis modified schedules for immigration judges and other court staff to reduce the number of people physically present in EOIR space, according to officials at those courts. Examples of modified schedules include rotating groups of immigration judges and staff into the court on a biweekly basis, or reducing judge schedules to 3 days in court each week. As previously mentioned, officials at all six of the immigration courts told us their judges allowed telephonic appearances for attorneys. The methods through which attorneys could participate in telephonic appearances varied by judge. According to private bar attorneys in one location, one immigration judge requested that attorneys send their phone numbers before hearings for the immigration judge to call. Another judge preferred to use a teleconference line. However, according to private bar

⁴⁰According to an April 2020 DOJ memorandum, the Justice Management Division uses data from several sources to monitor regions throughout the U.S., which enables the division to identify those regions approaching gating thresholds for different phases of reopening. When the division identifies that a region is approaching the gating threshold for a new phase of reopening, officials provide data for that region to the local U.S. Attorney. That office then decides whether to enter a new phase of reopening. If the U.S. Attorney decides to enter a new phase of reopening, it is to convey that decision to the Justice Management Division, which is to convey that decision to EOIR headquarters.

attorneys, OPLA attorneys, and immigration judges we interviewed, respondents continued to appear in person for their hearings in some courts during COVID-19 once they reopened.

EOIR Developed Guidance on Health and Safety Measures, but Mask-Wearing Guidance Is Not Tailored to the Courtroom Setting

Since March 2020, DOJ and EOIR have distributed various guidance documents and reminders to immigration court staff regarding COVID-19 protocols that included health and safety requirements, such as the expectation of mask-wearing while in EOIR space. However, none of the guidance documents distributed to immigration courts that we reviewed include health and safety instructions tailored to the immigration courtroom setting. In particular, in December 2020 and May 2021, EOIR headquarters officials told us that EOIR expects all individuals present in a courtroom to wear masks for the duration of the proceedings and that EOIR headquarters sent out various reminders to immigration courts reiterating this expectation throughout the pandemic.⁴¹ However, our analysis of EOIR's guidance documents indicates that they do not specifically direct EOIR court staff and court visitors to wear masks in courtrooms for the duration of hearings, though EOIR headquarters officials' stated in May 2021 that this is the agency's continued expectation.

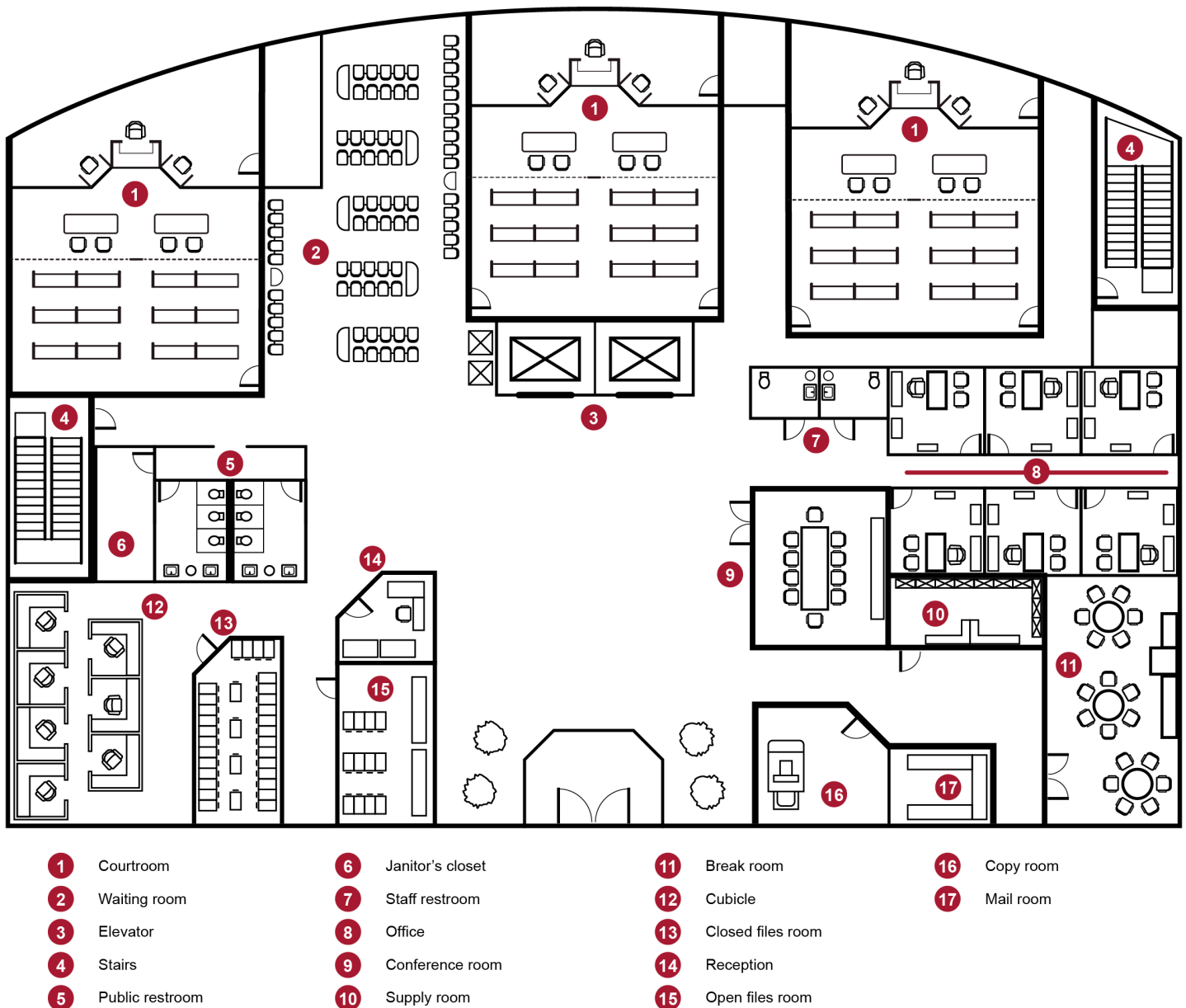
In May 2020, and later in February 2021, DOJ issued department-wide memoranda regarding COVID-19, in which DOJ categorized courtrooms as a nontraditional office setting where staff should follow guidance tailored to the relevant locations and circumstances. EOIR space at immigration courts comprises several areas, including staff offices, conference rooms, a waiting room, reception area, elevator lobbies, breakrooms, and courtrooms (see fig. 4). Immigration courtrooms are not typical office settings and can present unique circumstances for addressing the health and safety needs of EOIR staff and court visitors. For example, although individuals present in EOIR courtrooms might be able to maintain 6 or more feet of social distance, immigration court hearings may last for several hours in closed rooms. According to private bar attorneys we interviewed, some immigration courtrooms—particularly those in detained courts—can be small spaces where parties cannot maintain 6 feet of social distance. According to CDC guidance, multiple factors influence COVID-19 exposure risk, to include the duration of

⁴¹EOIR officials told us that the one exception to masks is for interpreters who can wear face shields in courtrooms.

exposure and environmental factors such as how well ventilated a space is.⁴²

⁴²CDC, *Deciding to Go Out* (Oct. 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html>. CDC, *Appendix A: Close Contact* (Mar. 11, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html#contact>. The CDC states that COVID-19 viral particles spread between people more readily indoors than outdoors. Indoors, the concentration of viral particles is often higher than outdoors. When indoors, ventilation mitigation strategies can help reduce viral particle concentration. Ventilation improvements can reduce the spread of COVID-19. CDC, *Ventilation in Buildings* (Washington, D.C.: Mar. 23, 2021).

Figure 4: Example of an Executive Office for Immigration Review (EOIR) Immigration Court Floorplan



Source: EOIR documentation. | GAO-21-104404

Regarding mask-wearing expectations, in particular, EOIR distributed several guidance documents to immigration courts since March 2020 that included instructions on mask-wearing. EOIR officials told us that they

regularly sent reminders to immigration courts with health and safety instructions, including that all staff and visitors should wear masks in courtrooms with the exception of translators who may wear face shields instead. However, some of the guidance documents and reminders we reviewed that EOIR sent to immigration courts included caveats for mask-wearing in EOIR space and were not tailored to the courtroom setting. For example:

- In April 2020, DOJ issued a department-wide memorandum instructing all staff to wear masks to the extent practicable, but this guidance was not tailored to courtroom settings. This memorandum states that individuals may remove masks if they can maintain 6 feet of distance. Further, the DOJ memorandum notes that these instructions are primarily pertinent to office-like settings, and that the guidance therein should not supersede DOJ component-specific guidance, including any guidance for courts.
- In June 2020, EOIR issued a policy memorandum instructing visitors to EOIR space to wear masks, social distance, and comply with other health and safety measures. EOIR headquarters officials said that this memorandum made clear that everyone present in the courtroom must wear masks for the duration of a hearing. However, the memorandum did not include instructions that were tailored to the courtroom setting, and the memorandum was specifically targeted to visitors and not EOIR staff.⁴³
- In several communications to EOIR staff from the summer of 2020 through the winter of 2020, the EOIR Director instructed immigration court staff to wear masks in EOIR space unless they could stay 6 feet apart, in which case staff could remove their masks. These communications were inconsistent with EOIR headquarters officials' stated expectation that all individuals present in a courtroom must wear masks for the duration of hearings, and further did not tailor mask-wearing guidance to the courtroom setting.
- When reopening non-detained courts, EOIR has published notices on these courts' websites stating that visitors and EOIR staff should wear masks throughout EOIR space, including in courtrooms. However, these notices only applied to non-detained courts that have resumed hearings and are not published on detained courts' websites as of April 2021.

⁴³EOIR Office of the Director, *Policy Memorandum 20-13, EOIR Practices Related to the COVID-19 Outbreak* (Falls Church, VA: June 11, 2020).

Eight out of 12 immigration judges with whom we spoke said they understood that everyone present in a courtroom, including judges, must wear masks in courtrooms. Three immigration judges said that they have used methods to enforce mask-wearing in their courtrooms, specifically. For example, according to the three judges, one made an attorney leave the courtroom to retrieve a mask before proceeding with a hearing, another corrects visitors who wear masks improperly, and a third judge relies on building security to ensure that all individuals in the courtroom wear masks.

However, based on our interviews with EOIR staff and court stakeholders we identified three locations where some courtroom practices were not fully consistent with EOIR headquarters officials' expectation for mask-wearing in courtrooms. For instance, private bar attorneys in one non-detained court location said that an immigration judge asked court visitors to remove their masks during in-person hearings on a regular basis to better hear their words. In a detained court location, one immigration judge allowed a visitor in the courtroom to remove a mask during a hearing for health reasons, although the judge was uncertain whether the visitor should have been allowed to remove the mask, according to the judge. EOIR headquarters told us that in the event that an individual has to remove a mask during a hearing, that individual should leave the courtroom and take a break from the hearing before returning to the courtroom wearing a mask. In another non-detained court location, an immigration judge told us that another judge at the court did not always wear a mask during hearings even if there were other people in the courtroom. In response, the ACIJ at that court instructed and routinely reminded court staff and immigration judges to wear masks in hearings.

In February 2021, the Assistant Attorney General for Administration issued a DOJ-wide memorandum establishing detailed mask guidance, stating that masks may only be removed when alone in an office with a closed door, or when eating or drinking and maintaining at least 8-10 feet of distance from others.⁴⁴ Further, social distancing is not a substitute for mask-wearing, according to the memorandum. The memorandum also directs DOJ components with nontraditional facilities, such as courts, to direct their workforce to follow component-specific guidance appropriately tailored to their locations and circumstances. EOIR officials said that EOIR space encompasses courtroom settings, and that the same

⁴⁴Department of Justice, *2021 Department of Justice COVID-19 Workforce Safety Plan* (Washington, D.C.: Feb. 16, 2021).

guidance should apply to all EOIR space to avoid confusion. However, the courtroom setting is unique—stakeholders, respondents, and immigration court staff may be present in the courtroom setting for extended durations of time—and the same guidance that applies to individual offices, breakrooms, or other areas of EOIR space may not be tailored to the specific circumstances of the courtroom setting. Following its release, EOIR officials distributed the DOJ memorandum to all EOIR staff at immigration courts. However, EOIR has not developed guidance tailored to the immigration courtroom setting as of May 2021.⁴⁵

In June 2020, we reported that providing clear, consistent communication in the midst of a national emergency—among all levels of government—is key.⁴⁶ Further, federal internal control standards state that management should effectively document internal control activities to establish and communicate the who, what, when, where, and why of internal control execution to personnel responsible for internal controls.⁴⁷ These standards also state that management documents in policies for each unit its responsibility for an operational process’s objectives, related risks, and control activity design, implementation, and operating effectiveness. Management communicates to personnel the policies and procedures so that personnel can implement the control activities for their assigned responsibilities. The unique circumstances of immigration courtroom settings increase the need for EOIR to develop tailored guidance, in accordance with DOJ’s February 2021 memorandum and EOIR headquarters officials’ mask-wearing expectations.⁴⁸ By issuing guidance on mask-wearing that is tailored to the immigration courtroom, EOIR can better ensure that immigration court staff and visitors clearly understand mask-wearing requirements, particularly as public health guidance evolves, and possibly lower the risk of individuals transmitting COVID-19 while in immigration court hearings.

⁴⁵In May 2021, the Office of Management and Budget notified federal agencies that fully vaccinated individuals no longer need to wear masks in federal space. However, this guidance did not include any details on nontraditional offices spaces, such as courtrooms.

⁴⁶GAO, *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*, [GAO-20-625](#) (Washington, D.C.: June 25, 2020).

⁴⁷[GAO-14-704G](#).

⁴⁸In technical comments on a draft of this report, in August 2021, EOIR officials told us that they distributed additional mask-wearing guidance in May and July 2021; however, EOIR did not provide documentation of this guidance. We will continue to follow up with EOIR to determine the extent to which these actions fully address our recommendation that EOIR develop mask-wearing guidance that is tailored to the immigration courtroom.

EOIR's Internal Guidance on Processes for Responding to COVID-19 Exposures in Immigration Courts Is Out of Date

Early in the pandemic, EOIR developed internal guidance on its processes for responding to COVID-19 exposures at immigration courts; however, the guidance is out of date as of February 2021. In April 2020, EOIR headquarters developed a document outlining the process EOIR headquarters officials are to follow, and the criteria officials are to use, to make decisions about whether and how to respond to reported COVID-19 exposures in immigration courts. This includes decisions on when to close and deep-clean a court, when staff should be told to quarantine, and when previously sick staff can return to the office.

However, the April 2020 document uses an outdated definition of a close contact for criteria as of May 2021 and does not reflect several updates to EOIR's close contact definition throughout the pandemic. In particular, the April 2020 guidance's criteria for a close contact was a person within 6 feet of a person who tested positive for COVID-19 for 10 minutes or longer, or in which a person was exposed to any bodily fluid from a person who tested positive. EOIR reflected several changes in its criteria for a close contact in different iterations of the incident report form—the form court staff use to report possible COVID-19 exposures to the COVID-19 response committee, as previously discussed. EOIR did not carry over those changes to the EOIR headquarters guidance for responding to COVID-19 exposures at immigration courts.⁴⁹ In July 2020, the incident report form referred to close contacts as any individuals within 6 feet of an infected or symptomatic individual. In October 2020, the incident report form referred to close contacts as any individuals within 6 feet of an infected or symptomatic individual for fifteen minutes or more. In November 2020, the incident report form referred to close contacts as any individuals within 6 feet of an infected or symptomatic individual for fifteen minutes or more over a 24-hour period.

EOIR officials said that EOIR stopped relying on its April 2020 document to guide its processes for responding to reports of COVID-19 exposures in immigration court because it contained outdated information, but EOIR has not taken steps to update it. Further, officials said that until December 2020, one senior official at EOIR headquarters managed the process for responding to COVID-19 exposures at immigration courts. When that official left EOIR, other EOIR headquarters officials stated they had to

⁴⁹When the COVID-19 response committee receives the incident report form from an immigration court, the committee determines what actions to take in response to the possible COVID-19 exposure (see fig. 4 for an explanation of how EOIR responds to COVID-19 exposures at immigration courts).

review the previous official's notes to find documentation of prior court-reported exposures and actions taken in response.

Additionally, three of the 12 immigration judges we spoke with told us that they did not know the process that EOIR headquarters officials use to determine how to respond to COVID-19 exposures at the immigration courts. All three of those immigration judges stated that they would like to better understand this process to feel more assured of their safety at work. Officials at EOIR headquarters said that they did not share the April 2020 document outlining how to respond to COVID-19 exposures, or any other information on how EOIR headquarters responds to COVID-19 exposures, with immigration judges. Instead, these officials told us that immigration judges can review the incident report form to understand EOIR headquarters' processes and decision-making. However, the incident report form collects detailed information about possible COVID-19 exposures from immigration courts; the form does not include any information on how the COVID-19 response committee uses that information to decide how to respond to COVID-19 exposures (e.g., closing and cleaning the court, telling individuals to quarantine, etc.).

As previously noted, federal internal control standards state that management should effectively document its internal controls.⁵⁰ These standards also note that documentation is a necessary part of an effective internal control system, which provides a means to retain organizational knowledge and mitigate the risk of having such knowledge limited to a few personnel, as well as a means to communicate that knowledge, as needed, to external parties. Further, management should communicate to personnel the policies and procedures so that personnel can implement the control activities for their assigned responsibilities. We have also reported that it is important for the federal government to disseminate clear, updated information when responding to changing circumstances during a pandemic.⁵¹

Updating its internal guidance would help EOIR ensure that the agency has documented processes for responding to COVID-19 exposures in immigration courts that are current and reflect the evolving circumstances of the pandemic. In addition, documenting up-to-date processes would ensure that they are available in the event of staff turnover. Further,

⁵⁰GAO-14-704G.

⁵¹GAO, *Influenza Pandemic: Sustaining Focus on the Nation's Planning and Pandemic Efforts*, GAO-09-334 (Washington, D.C.: Feb. 26, 2009).

distributing the updated internal guidance to all EOIR staff at immigration courts—including ACIJIs, immigration judges, court administrators, and other court staff and contractors—would help EOIR ensure that its staff understand the agency’s processes for responding to COVID-19 exposures and feel more assured of their own health and safety.

EOIR Did Not Regularly Engage with Stakeholders during the COVID-19 Pandemic

EOIR Used Existing Communication Mechanisms to Share Some Information with Stakeholders during the Pandemic

EOIR headquarters has used several centralized communication mechanisms to provide some information to the public and court stakeholders (e.g., respondents, private bar attorneys, private bar associations, and OPLA attorneys) on immigration court operations during the pandemic. According to EOIR officials, EOIR also used these same communication mechanisms to communicate with stakeholders and the public prior to the pandemic.⁵²

Specifically, EOIR has used its social media accounts, email, and its public website, among other mechanisms, to communicate with stakeholders and the public.

- **Social media.** EOIR has used its Twitter feed and Facebook page to provide general announcements about court closures and updates on immigration court operations nationwide, such as when a non-detained court will reopen. According to EOIR officials, headquarters staff would work past regular business hours to post court closure announcements in as timely a manner as possible for stakeholders.⁵³

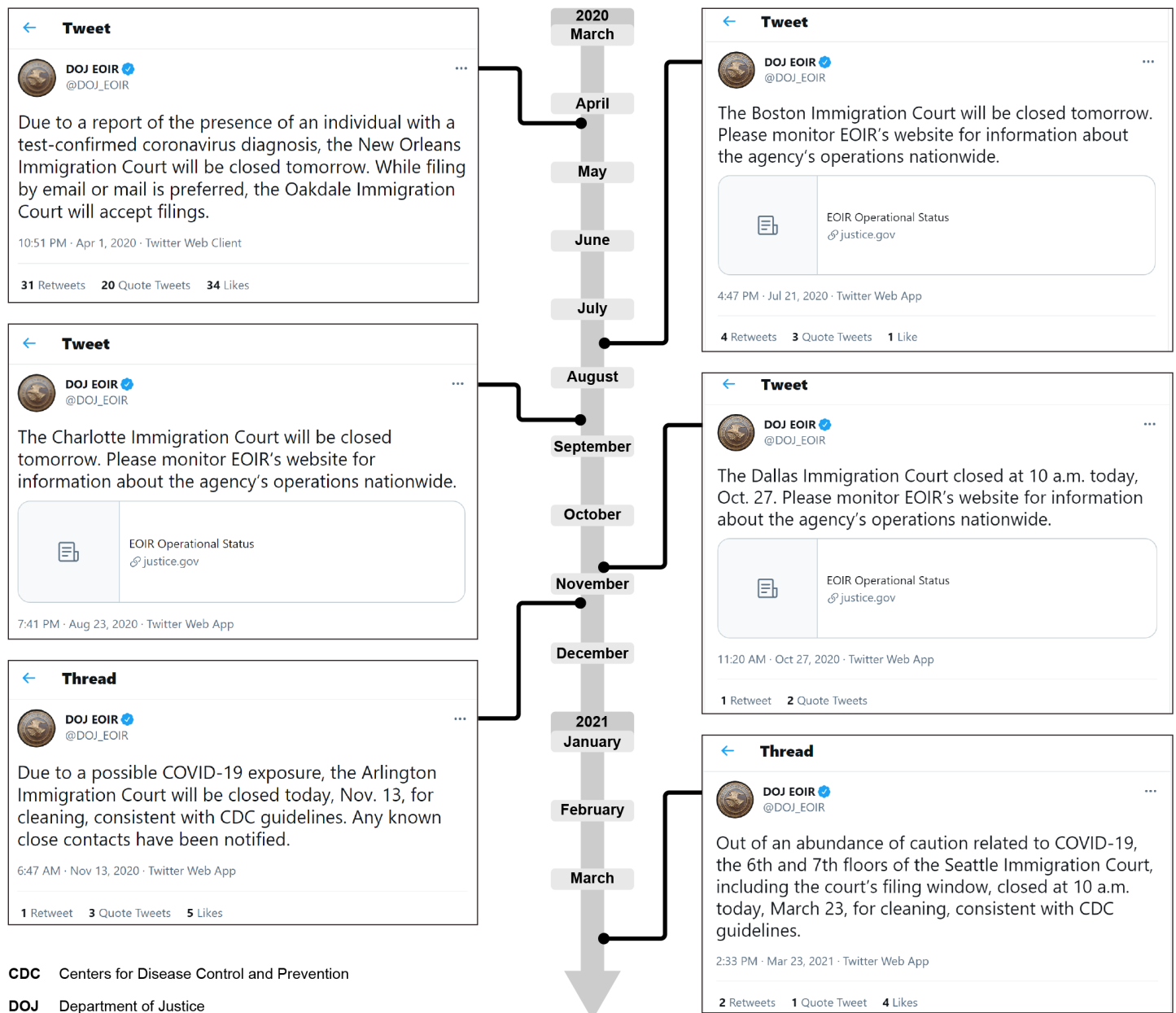
The information EOIR provided in its court closure announcements evolved over the course of the pandemic (see fig. 5). Specifically, in March and early April 2020, EOIR attributed several court closures to COVID-19. Then, from late April through October 2020, EOIR did not

⁵²According to a September 2019 DOJ policy memo, all EOIR communications with external stakeholders and the public must be approved by DOJ’s Public Affairs Office prior to being released.

⁵³EOIR officials also noted that some social media posts require DOJ approval before posting.

publicly announce that it closed a court due to a known or potential COVID-19 exposure. EOIR's closure announcements on Twitter, for example, stated that EOIR closed a court but did not provide any reason for the closure. According to EOIR officials, in November 2020, EOIR modified court closure announcements to include COVID-19 as the reason for court closures. At times, EOIR provided additional information in its social media posts, such as whether EOIR was cleaning the court and had already notified any close contacts.

Figure 5: Changes in the Executive Office for Immigration Review's (EOIR) Court Closure Announcements on Twitter during the COVID-19 Pandemic



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- **Listserv emails.** According to EOIR headquarters officials, EOIR uses a GovDelivery listserv to provide similar announcements, as seen on social media, to approximately 28,000 subscribers.⁵⁴ Listserv subscribers can include private bar attorneys, OPLA attorneys, representative organizations such as the American Immigration Lawyers Association, and members of the public.
 - **EOIR's operational status webpage and court webpages.** EOIR maintains a central webpage, created during the pandemic, that provides the agency's operational status, including links to other information, like the agency's public health notices and Twitter posts. Each immigration court also has a webpage that provides information such as a court's contact information and operational status. During the pandemic, EOIR has included additional information on the courts' webpages, such as modifications to individual courts' operations and health and safety protocols (e.g., wearing face masks and social distancing).
 - **Public Information Officer.** Public Information Officers are regional communications staff who serve as a liaison between EOIR headquarters, court stakeholders, and the public. According to EOIR headquarters officials, these officers serve in six regions in the U.S. and are responsible for providing information from EOIR headquarters to the public regarding policy changes nationwide and local immigration court operations, and to assist EOIR headquarters in responding to stakeholder comments and requests.
 - **Standing orders.** Immigration courts and judges issued standing orders to establish and communicate modifications to individual judge practices, or local court operating procedures due to COVID-19, to stakeholders, respondents, and the public.⁵⁵ EOIR publishes standing orders on its webpage. COVID-19-related modifications to court operations, as described earlier, addressed by these standing orders include procedures for attorneys to appear for hearings, both master and merit hearings, over the phone or through a video call using WebEx. Additionally, standing orders addressed procedures for email filing and limitations to these filings, such as filing time frames and

⁵⁴GovDelivery is a web-based email subscription service system that allows members of the public to receive news and information on selected topics available on federal agencies' websites.

⁵⁵Standing orders are court documents available to the public that outline individual judge courtroom practices, or local rules and operating procedures for an immigration court. Standing orders for an entire court may not be inconsistent with 8 C.F.R. ch. V, and must have majority written concurrence among immigration judges within the court, and written approval of the Chief Immigration Judge. 8 C.F.R. § 1003.40.

page limits. Lastly, standing orders addressed health and safety requirements for visitors such as restricting individuals experiencing COVID-19 symptoms from entering the immigration court space (filing window, lobby, and courtroom).

COVID-19 Pandemic Highlighted Long-Standing Limitations in EOIR's Engagement with Stakeholders

Stakeholders we spoke to, such as private bar and OPLA attorneys, said that they had limited opportunities to engage with EOIR during the pandemic. Additionally, stakeholders stated that these same limitations existed prior to the pandemic; however, COVID-19 heightened stakeholders' concerns over these limitations. In particular, during the pandemic, these private bar and OPLA attorneys told us that they encountered challenges navigating changes to EOIR's court operations and obtaining information from EOIR to help address their operational and health and safety concerns.

We have previously reported on the importance of positive working relations between participants from different entities when responding to an emergency.⁵⁶ In addition, we have reported that as agencies consider local conditions during the COVID-19 pandemic, they should share information and cooperate with other agencies, or stakeholders, located in the same area.⁵⁷ In the past, EOIR held regular stakeholder meetings. However, EOIR officials said that EOIR decided not to hold these stakeholder meetings beginning in the fall of 2017 through April 2021. According to EOIR's webpage listing information on public events, all of EOIR's meetings with stakeholders during that time were sporadic. Further, the meetings focused on informing stakeholders about EOIR's plans to implement new technology (specifically, EOIR's electronic case filing system and WebEx technology to conduct virtual hearings), or new

⁵⁶[GAO-12-1022](#).

⁵⁷GAO, *Federal Workforce: Key Considerations for Agencies Returning Employees to Workplaces during Pandemics*, [GAO-20-650T](#) (Washington, D.C.: June 25, 2020).

processes such as a case flow processing model and the accreditation of organizations and recognition of non-attorney representatives.⁵⁸

Private bar association representatives and private bar attorneys we spoke with stated that historically, prior to 2017, stakeholders could pose questions to EOIR senior management during those regular stakeholder meetings and engage in a collaborative dialogue to help address challenges that attorneys and courts were facing. Association representatives also stated that they had been able to resolve challenges through these meetings and thought they were helpful as information-sharing forums. However, during the pandemic, these stakeholders said they were unable to raise concerns or questions with EOIR about matters such as immigration court policy or court operations, and have those concerns or questions addressed in a satisfactory manner through two-way communication.

For example, during the COVID-19 pandemic, stakeholders we spoke with noted that they experienced challenges navigating the modifications to court operations that EOIR implemented at some courts. Specifically, stakeholders experienced challenges with EOIR's process to notify the public and stakeholders about COVID-19 exposures in the courts and rescheduled hearings, and they lacked two-way communications to engage with EOIR to help address their concerns.

COVID-19 exposure notifications. While they may receive EOIR's announcements about court closures via social media or listserv emails, all private bar attorneys and OPLA attorneys at four of the six locations we spoke with said that EOIR had not shared sufficient information about

⁵⁸In April 2021, EOIR established a revised case flow processing model to increase docket efficiency and reduce the number of in-person hearings for dealing with preliminary and routine matters. This case flow processing model applies to non-detained cases in which a representative, as defined in 8 C.F.R. 1001.1(j) and 1292.1, files a Form EOIR-28 at least 15 days before a master calendar hearing. For such cases, the court will vacate the master calendar hearing, and an immigration judge may decide the issue of removability based on written pleadings and filed evidence. The judge may also request additional evidence and briefings or schedule a hearing on removability. Executive Office for Immigration Review, *Revised Case Flow Processing Before the Immigration Courts*, OCIJ PM 21-18 (Washington, D.C.: Apr. 2, 2021).

COVID-19 exposures and related court closures.⁵⁹ Private bar attorneys said this was a vital concern for them because they could not determine if they had been exposed to COVID-19 while in EOIR space based solely on the information EOIR provided through its social media and listserv emails. Even after EOIR began announcing more consistently in November 2020 that COVID-19 was the reason for court closures, two private bar attorneys stated that they still did not have sufficient, actionable information, such as the time and location of the exposure, to determine if they had been exposed to COVID-19 while in EOIR space. Court staff, per EOIR's external communications policy, are to redirect any stakeholder inquiries to EOIR headquarters officials or EOIR's public information officers.⁶⁰ ACIJs and court administrators we interviewed across three locations told us they were frustrated because EOIR did not permit them to respond to stakeholders' questions about COVID-19 exposures or contact tracing processes.

Private bar attorneys in four locations noted that the public information officers did not provide any additional, actionable information that would allow them to determine whether it was necessary to quarantine or be tested for COVID-19. Because of this concern, some stakeholders' course of action was to engage with EOIR through formal requests for information or through civil complaints during the COVID-19 pandemic. For example, in August 2020, a coalition of three immigration law and attorney organizations filed a Freedom of Information Act request to obtain detailed information on EOIR's policies and procedures to respond to COVID-19, including health and safety measures and criteria to open or close courts, and COVID-19 exposures at immigration courts, among other things.⁶¹ Additionally, in July 2020, the New Jersey Chapter of a

⁵⁹OPLA attorneys at the other two locations that we spoke with said they received informal notifications from the ACIJ or court administrator about COVID-19 exposures. However, OPLA attorneys from one location said they do not receive formal communications from EOIR headquarters regarding COVID-19 exposures, and attorneys from the other location said that formal communications from EOIR do not always include the reason, such as COVID-19 exposures, for court closures.

⁶⁰On September 24, 2019, DOJ's Deputy Attorney General released memorandums indicating that all external communications, such as stakeholder communication, from EOIR must be approved in advance by the Director of the Office of Public Affairs. However, this directive is not applicable to EOIR internal communications.

⁶¹Freedom of Information Act Request from Am. Immigration Lawyers Ass'n, Nat'l Immigration Project & Am. Immigration Council to EOIR for COVID-19-related Records, AILA Doc. No. 20080338 (Aug. 4, 2020), *available at* <https://www.aila.org/infonet/foia-request-seeks-information-on-immigration>.

national immigration attorney group filed a civil complaint against EOIR alleging that EOIR compelled attorneys to appear in person for non-detained hearings despite their health and safety concerns during the pandemic.⁶²

Rescheduling hearings. Court officials across the six immigration courts included in our analysis said they had to reschedule hearings during the pandemic due to reasons such as illnesses, quarantines related to possible COVID-19 exposures, and alternating or rotating immigration judge schedules. Court stakeholders raised concerns to us about challenges with preparing for and participating in hearings because of immigration judges' sometimes unpredictable schedules during the pandemic. Private bar attorneys from four courts in our sample and OPLA attorneys from four courts, respectively, told us that EOIR, at times, did not explain or provide sufficient advance notice of these schedule adjustments.

Further, EOIR did not provide judges' rotation schedule to stakeholders through the first 9 months of the pandemic. According to EOIR staff, hearings for judges out on rotation, for example, were typically cancelled and rescheduled to a later date. One ACIJ acknowledged that the court did not always successfully notify attorneys and respondents of rescheduled hearings, and at times, respondents and attorneys appeared for a hearing that was canceled and rescheduled. Private bar attorneys from two courts we spoke with said respondents and attorneys wasted time and resources preparing for hearings that were rescheduled

⁶²Am. Immigration Lawyers Ass'n, N.J. Chap. v. EOIR, No. 20-9748, Doc. 1, Complaint for Injunctive and Declaratory Relief (D. N.J. Jul. 31, 2020). EOIR, at that time, provided attorneys the option to appear in person for hearings via video teleconference with respondents at a separate courtroom while the court staff and judge were physically located in an adjacent courtroom. The U.S. District Court denied plaintiffs' emergency motion for a preliminary injunction to stop EOR compelling in-person appearances at Newark Immigration Court and to require the Newark court to provide attorneys with the option to appear remotely via video due to the COVID-19 pandemic. Am. Immigration Lawyers Ass'n, N.J. Chap. v. EOIR, No. 20-9748, Doc. 39, Opinion Denying Plaintiffs' Emergency Motion for a Preliminary Injunction (D. N.J. Oct. 16, 2020). In the accompanying order, the court also denied the defendants' request to dismiss the case as moot. Am. Immigration Lawyers Ass'n, N.J. Chap. v. EOIR, No. 20-9748, Doc. 40, Order Denying Plaintiffs' Motion for Preliminary Injunction (without prejudice) and Denying Defendants' Request to Dismiss Matter as Moot (D. N.J. Oct. 16, 2020). On February 16, 2021, this case was terminated, and all of plaintiffs' claims were dismissed, without prejudice, following promulgation of Policy Memorandum 21-03, containing several provisions related to the use of WebEx for hearings in the immigration courts, and subsequent discussions between the parties regarding a stipulation of dismissal of the case. See Am. Immigration Lawyers Ass'n, N.J. Chap. v. EOIR, No. 20-9748, Doc. 45, Stipulation of Dismissal without Prejudice (D. N.J. Feb. 16, 2021).

unexpectedly and that unnecessary trips to the immigration court posed potential health risks to attorneys, respondents, and witnesses who may inadvertently expose themselves to COVID-19.

Due to these concerns, one private bar association's course of action was to file a Freedom of Information Act request in September 2020 with EOIR to release immigration judge schedules so that private bar attorneys could anticipate when hearings would not go forward. According to attorneys who submitted the information request, their previous repeated attempts to obtain the judges' schedule from the immigration court staff and the public information officer failed, including three letters from two U.S. senators to EOIR on their behalf.

EOIR officials identified factors that affected how they engaged with stakeholders during the pandemic. One factor was the centralization of communication within headquarters. According to EOIR officials, EOIR headquarters is responsible for providing information on COVID-19 exposures, contact tracing, and other related policies to the public to maintain consistency and prevent the release of protected or false information. EOIR officials said that this practice is consistent with EOIR's general communication practices, in place prior to the pandemic, whereby court staff are to redirect all external inquiries to the public information officers or EOIR's Communications and Legislative Affairs Division for a response. Court administrators and ACIJs at all six locations confirmed to us that EOIR does not permit them to respond directly to COVID-19-related questions from stakeholders or the public. Another factor EOIR headquarters officials identified was balancing information sharing with individual privacy considerations. EOIR officials told us that they believed they could not share more specific information with stakeholders and the public about COVID-19 exposures at immigration courts without potentially violating individuals' medical privacy. Further, EOIR officials told us that providing information to the public on judges' rotation schedules could pose security risks to the judges.

While these factors are important to ensuring consistent and accurate messaging and protecting privacy, EOIR could take additional steps to strengthen its engagement with stakeholders. Federal internal control standards call for agencies to communicate with and obtain quality information from external parties, such as stakeholders. Open, two-way external reporting lines allow for this communication.⁶³ Engagement with

⁶³[GAO-14-704G](#).

external parties—particularly during an emergency such as a pandemic—can help an agency achieve its objectives and address related risks. In May 2021, EOIR held its first stakeholder meeting in nearly 4 years, and EOIR officials stated they have plans to hold future meetings. However, as of May 2021, EOIR has not provided us with documentation to verify any such plans, and it is too soon to tell how EOIR will implement them moving forward. Taking steps to regularly engage with immigration court stakeholders in two-way communications would help not only address stakeholders’ concerns during the COVID-19 pandemic, such as immigration court operations and stakeholders’ health and safety concerns, but also promote positive, long-term relationships beyond the pandemic.

EOIR’s Caseload Changed in Several Ways during the COVID-19 Pandemic

EOIR’s data indicate that its caseload changed in several ways from March through October 2020. Overall, pending cases continued to increase during this time period consistent with a historical increase in pending cases prior to the pandemic. In addition, the total number of immigration judge decisions decreased, after increasing from January 2019 to February 2020, and decisions specifically issued *in absentia* also decreased.⁶⁴ Case receipts continued to decrease after March 2020, following a decrease that started in August 2019. EOIR data also indicate an increase in the number of cases that were adjourned and continued to a later date, as a result of immigration court closures. Multiple factors can affect the number of pending cases, continuances, immigration judge decisions, and case receipts, including DHS’s immigration enforcement priorities during the pandemic.

Pending caseload steadily increased. EOIR data indicate that total pending cases increased from March through October 2020, following several months of EOIR’s caseload remaining somewhat constant (see fig. 6).⁶⁵ The number of pending cases at both non-detained and hybrid courts increased, while pending cases at detained courts decreased. Though the overall number of pending cases increased during the pandemic, pending cases had been increasing prior to March 2020. For example, in 2017, we reported that EOIR’s open cases grew by 44

⁶⁴Immigration judges make removal decisions *in absentia* when a respondent does not show up to a scheduled hearing.

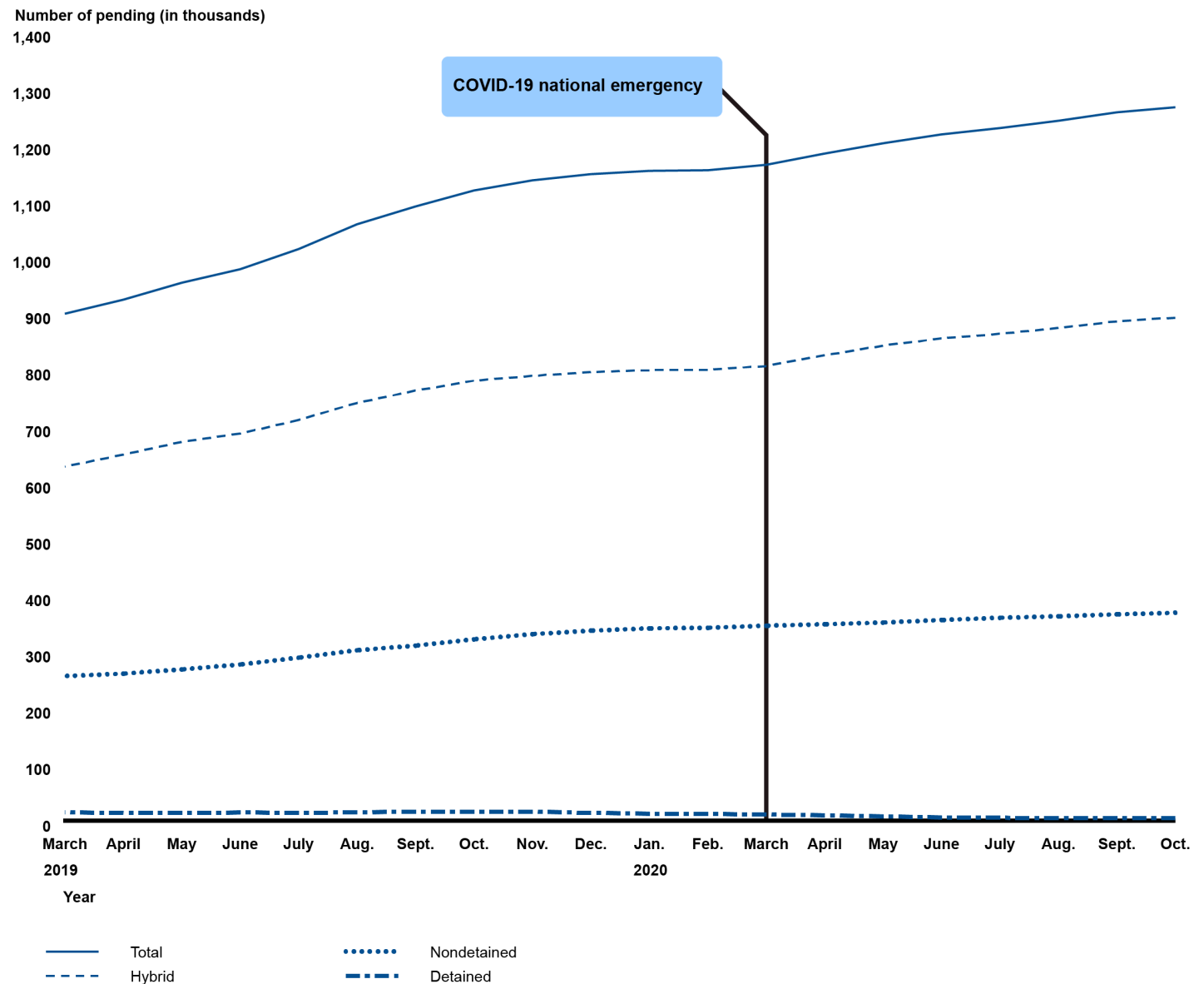
⁶⁵Pending cases by month indicate the number of open cases at the end of the month. For instance, the number of pending cases in September is the number of open cases on September 30.

percent from fiscal year 2006 through fiscal year 2015.⁶⁶ Additionally, EOIR reported that the number of pending cases grew by 84 percent from fiscal year 2014 through 2018.⁶⁷

⁶⁶[GAO-17-438](#). In 2017, we made 11 recommendations to improve EOIR's workforce planning, hiring, and analysis of continuance data. As of February 2021, EOIR has taken actions to address most of our recommendations, such as establishing and monitoring comprehensive case completion goals. EOIR has plans to address another recommendation by developing a strategic workforce plan.

⁶⁷Executive Office for Immigration Review, *FY2018 Statistics Yearbook* (Falls Church, VA: August 2019).

Figure 6: Executive Office for Immigration Review's (EOIR) Pending Caseload, by Court Type, from March 2019 through October 2020



Source: EOIR data. | GAO-21-104404

Notes: A detained court is a court where detained respondents comprised at least 95 percent of cases completed in the last year. Similarly, a non-detained court is a court where non-detained respondents comprised at least 95 percent of cases completed in the last year. Any court that does not meet the thresholds for either the detained or non-detained court is a hybrid court, which has a combination of both detained and non-detained respondents. Pending cases are the number of open cases at the end of each month. We requested data in two parts to help ensure up-to-date data. Data from October 2017 through December 2019 are as of October 2020. Data from January 2020 through

October 2020 are as of January 2021. The President declared COVID-19 a national emergency on March 13, 2020.

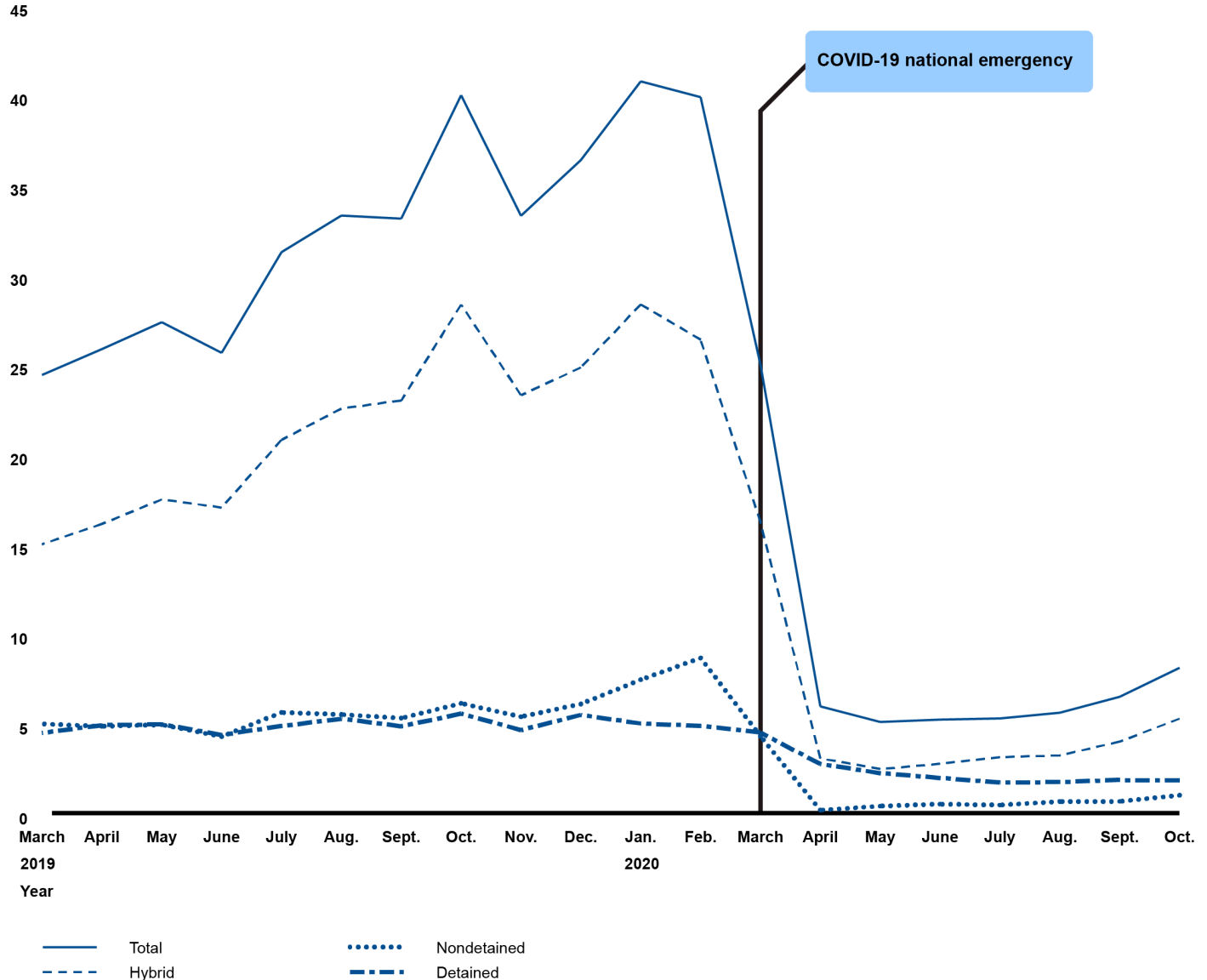
The decline in pending cases at detained courts could be attributable to multiple factors. For instance, ICE's population of detained individuals decreased during this time period due to changes in immigration enforcement operations and priorities during the pandemic, according to EOIR. Additionally, OPLA officials told us that their office engaged with EOIR and ICE Enforcement and Removal Operations—the ICE division that oversees and manages detention—to identify and utilize video teleconference units in detention centers and assign non-detained immigration judges to preside over cases virtually. Respondents attended their court hearings in these video teleconference units, and the assigned immigration judges presided over these cases virtually. This process allowed EOIR to hold more detained hearings, according to officials. This also ultimately helped to reduce the detained population during the pandemic.

Immigration judge decisions and decisions made *in absentia* decreased. EOIR data indicate that total immigration judge decisions sharply decreased in the spring of 2020 and began to increase again in the summer of 2020 (see fig. 7).⁶⁸ Immigration decisions at non-detained and hybrid immigration courts followed a similar trend as total immigration judge decisions. That is, EOIR data indicate sharp decreases in decisions at the beginning of the pandemic and slight increases during and after the summer of 2020 as EOIR began to reopen these courts. Immigration judge decisions at detained courts steadily decreased during this time. Although detained courts remained open during this time period, EOIR modified operations at these courts for health and safety reasons, and ICE had fewer respondents in detention due to various factors, including immigration enforcement priorities during this time period, as previously discussed.

⁶⁸An immigration judge decision indicates an immigration judge's decision on the outcome of a case. For instance, an immigration judge can decide that a case should end with an order of removal, grant of asylum (or other relief) to an applicant, or another decision.

Figure 7: Executive Office for Immigration Review's (EOIR) Immigration Judge Decisions, by Court Type, from March 2019 through October 2020

Number of immigration judge decisions (in thousands)



Source: EOIR data. | GAO-21-104404

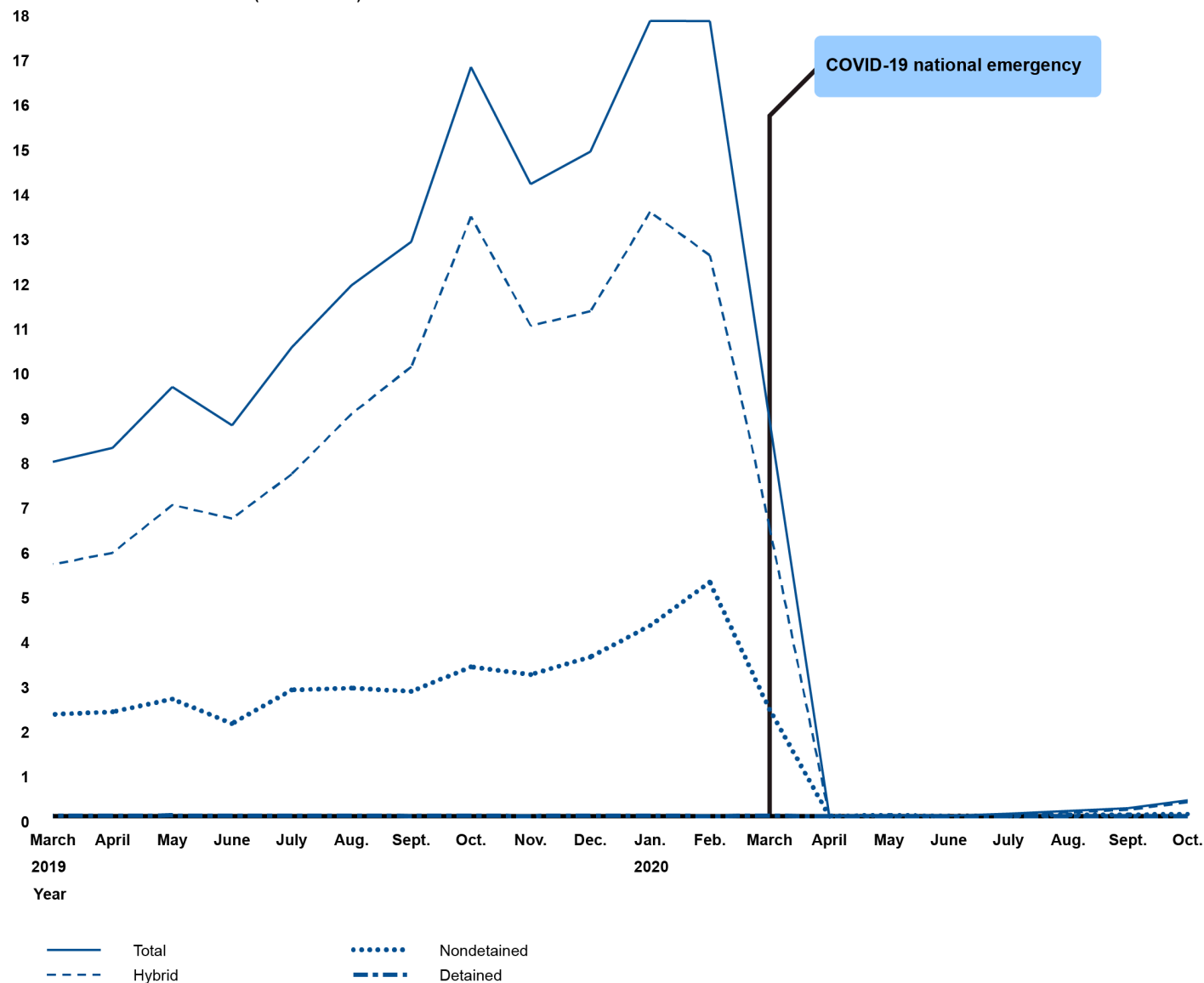
Notes: A detained court is a court where detained respondents comprised at least 95 percent of cases completed in the last year. Similarly, a non-detained court is a court where non-detained respondents comprised at least 95 percent of cases completed in the last year. Any court that does not meet the thresholds for either the detained or non-detained court is a hybrid court, which has a combination of both detained and non-detained respondents. Immigration judge decisions occur

when an immigration judge rules on the outcome of a case. We requested data in two parts to ensure up-to-date data. Data from October 2017 through December 2019 are as of October 2020. Data from January 2020 through October 2020 are as of January 2021. The President declared COVID-19 a national emergency on March 13, 2020.

More specifically, EOIR data indicate that immigration judge decisions issued *in absentia* decreased sharply in the spring of 2020 and increased slightly in the fall of 2020 (see fig. 8). Total immigration judge decisions made *in absentia* for non-detained and hybrid courts decreased sharply at the beginning of the pandemic, and immigration judge decisions made *in absentia* for detained courts remained low throughout the time period from March 2019 through October 2020.

Figure 8: Executive Office for Immigration Review's (EOIR) *In Absentia* Immigration Court Decisions, by Court Type, from March 2019 through October 2020

Number of *In absentia* decisions (in thousands)



Source: EOIR data. | GAO-21-104404

Notes: A detained court is a court where detained respondents comprised at least 95 percent of cases completed in the last year. Similarly, a non-detained court is a court where non-detained respondents comprised at least 95 percent of cases completed in the last year. Any court that does not meet the thresholds for either the detained or non-detained court is a hybrid court, which has a combination of both detained and non-detained respondents. *In absentia* immigration judge decisions occur when a respondent does not appear for a scheduled court hearing and the immigration judge rules on the outcome of a case. We requested data in two parts to ensure up to date data. Data from

October 2017 through December 2019 are as of October 2020. Data from January 2020 through October 2020 are as of January 2021. The President declared COVID-19 a national emergency on March 13, 2020.

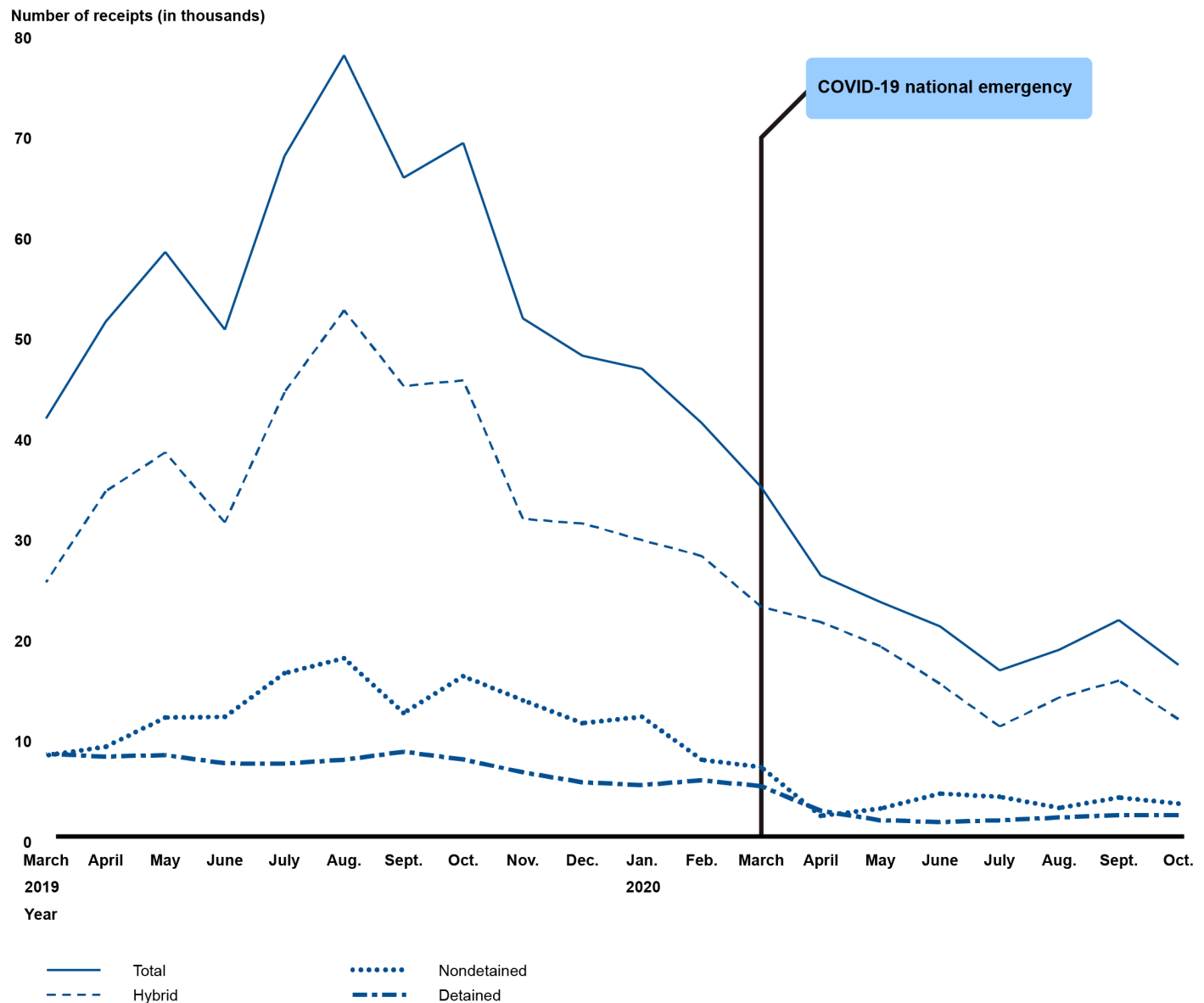
Cases at detained courts typically do not have *in absentia* removal orders, according to EOIR officials. The detention facility staff generally ensures that respondents appear for their scheduled hearings. EOIR officials we spoke with from courts with non-detained dockets said that, based on their observations, the proportion of *in absentia* removal orders during the pandemic is about the same as prior to the pandemic. However, EOIR officials from two courts said that it is rare for judges to issue *in absentia* removal orders during or subsequent to an individual merit hearing, and judges issue most *in absentia* removal orders during the master calendar hearing.⁶⁹ At the time of our work, only one court in our sample had resumed a limited number of non-detained master calendar hearings.

Case receipts decreased. EOIR data indicate that total case receipts continued to decrease during the COVID-19 pandemic, following a sharp decrease in case receipts prior to COVID-19 (see fig. 9).⁷⁰ Total receipts increased from July to September 2020 and then began to decrease again. Case receipts at hybrid courts followed a similar trend during this time period, decreasing early in the pandemic, increasing from July to September, and decreasing again through October 2020. Case receipts at non-detained courts decreased early in the pandemic and then fluctuated around 4,000 new case receipts per month. Case receipts at detained courts decreased early in the pandemic and then remained low.

⁶⁹We spoke with officials from three courts with non-detained dockets as part of our audit work. One of those three courts had resumed a limited number of master calendar hearings at the time when we spoke with officials at that court. The other two courts had not resumed master calendar hearings yet, only individual merit hearings.

⁷⁰Case receipts include initial case receipts, or new case receipts that DHS referred to EOIR, and other case receipts. Other case receipts can include any receipts that are not new, such as cases remanded to immigration courts by the Board of Immigration Appeals.

Figure 9: Executive Office for Immigration Review's (EOIR) Case Receipts, by Court Type, from March 2019 through October 2020



Source: EOIR data. | GAO-21-104404

Notes: A detained court is a court where detained respondents comprised at least 95 percent of cases completed in the last year. Similarly, a non-detained court is a court where non-detained respondents comprised at least 95 percent of cases completed in the last year. Any court that does not meet the thresholds for either the detained or non-detained court is a hybrid court, which has a combination of both detained and non-detained respondents. Case receipts include initial case receipts, or new case receipts that the Department of Homeland Security referred to EOIR, and other case receipts. Other case receipts can include any receipts that are not new, such as cases

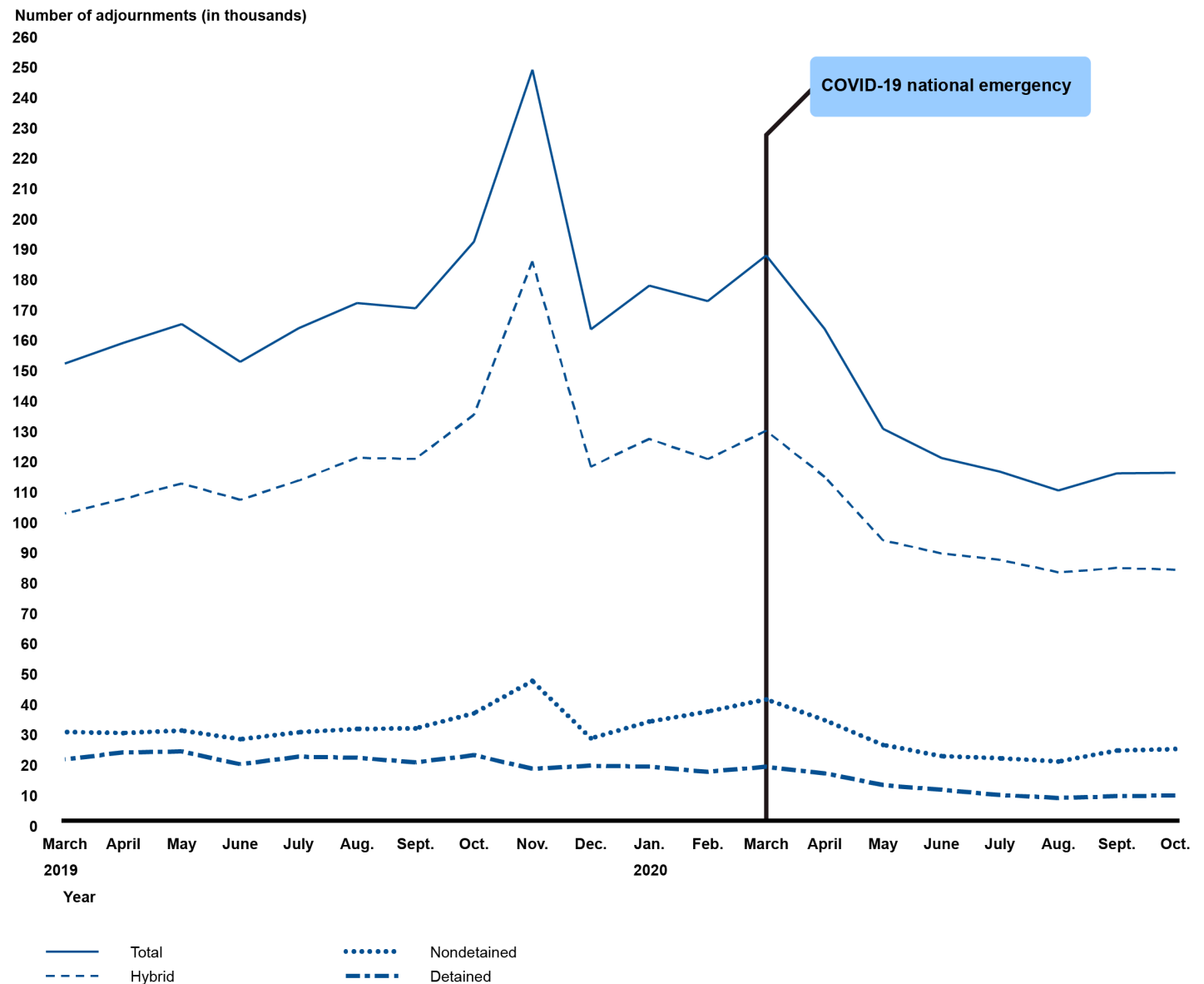
remanded to immigration courts by the Board of Immigration Appeals. We requested data in two parts to ensure up-to-date data. Data from October 2017 through December 2019 are as of October 2020. Data from January 2020 through October 2020 are as of January 2021. The President declared COVID-19 a national emergency on March 13, 2020.

There were fewer referrals to the immigration courts during the pandemic. In particular, ICE's average daily population of detained individuals decreased during the pandemic, from about 45,000 detainees in January 2020 to nearly 21,000 detainees in October 2020, according to ICE data. As a result, EOIR's detained cases simultaneously decreased. ICE attributed this decrease in average daily population to a simultaneous decrease in immigration enforcement and new detainees in detention facilities. ICE also reduced the capacity of detention facilities to allow for social distancing. EOIR transferred any respondents whom ICE released from detention to the non-detained docket, according to officials.

Total hearing adjournments, including continuances, decreased, but those related to court closures increased. EOIR data indicate that total hearing adjournments, to include continuances, decreased from March to August 2020 and then began to slightly increase from August through October 2020 (see fig. 10).⁷¹ Adjournments at hybrid and non-detained courts followed a similar trend, decreasing from March to August 2020, and then increasing through October 2020. Adjournments at detained courts decreased from March to August 2020 and then increased slightly from August through October 2020.

⁷¹EOIR assigns an adjournment code for actions taken on a particular hearing, to include a continuance, a completion at or prior to the hearing, or a reset, among other actions. A continuance is a temporary adjournment or postponement of a case until a later date, for good cause. See 8 C.F.R. §§ 1003.29 (Continuances), 1240.6 (Postponement and adjournment of hearing). Continuances occur over the normal course of a case but also occur when an event delays the final decision of a case.

Figure 10: Executive Office for Immigration Review's (EOIR) Adjournments, by Court Type, from March 2019 through October 2020



Source: EOIR data. | GAO-21-104404

Notes: A detained court is a court where detained respondents comprised at least 95 percent of cases completed in the last year. Similarly, a non-detained court is a court where non-detained respondents comprised at least 95 percent of cases completed in the last year. Any court that does not meet the thresholds for either the detained or non-detained court is a hybrid court, which has a combination of both detained and non-detained respondents. Hearing adjournments are entered on a number of bases, including continuances under various circumstances, case completions at or prior to hearing, and instances in which the date of a hearing was entered incorrectly and could not be

rectified, among other reasons. A continuance occurs when an immigration judge temporarily adjourns or postpones the case until a later date, for good cause. See 8 C.F.R. §§ 1003.29 (Continuances), 1240.6 (Postponement and adjournment of hearing). Continuances occur over the normal course of a case but also occur when an event delays the final decision of a case. We requested data in two parts to ensure up-to-date data. Data from October 2017 through December 2019 are as of October 2020. Data from January 2020 through October 2020 are as of January 2021. The President declared COVID-19 a national emergency on March 13, 2020.

Specifically regarding continuances, immigration judges adjourn cases and grant continuances for a variety of reasons anytime the case is unresolved at one hearing and the immigration court has to schedule a future hearing. For instance, an immigration judge issues a continuance when a master calendar hearing progresses to a merits hearing. Continuances can affect respondents differently, depending on where respondents are in their immigration proceedings. ACIJIs in three locations told us that cases that EOIR continued during the COVID-19 pandemic typically go to the end of the queue, and rescheduling those cases depends on the size of the immigration court's backlog. Based on the courts included in our analysis, a case could be rescheduled from 1 to nearly 4 years in the future.⁷² For example, respondents whose initial hearings EOIR continued during the pandemic may not begin immigration proceedings for several years. Similarly, respondents who have had an initial hearing and may require further proceedings, or are awaiting a final decision from an immigration judge, may not have their cases completed for several years if they were continued by EOIR during the COVID-19 pandemic prior to a final hearing or issuance of the final decision.

EOIR specifically tracks continuances resulting from various circumstances, including those due to court closures. Continuances resulting from court closures can also include reasons other than COVID-19, including civil unrest, building maintenance issues, and disruptive weather. EOIR data indicate that continuances specifically due to court closures increased sharply at the beginning of the pandemic, from close to 550 in February 2020 to about 110,000 in April 2020. From March

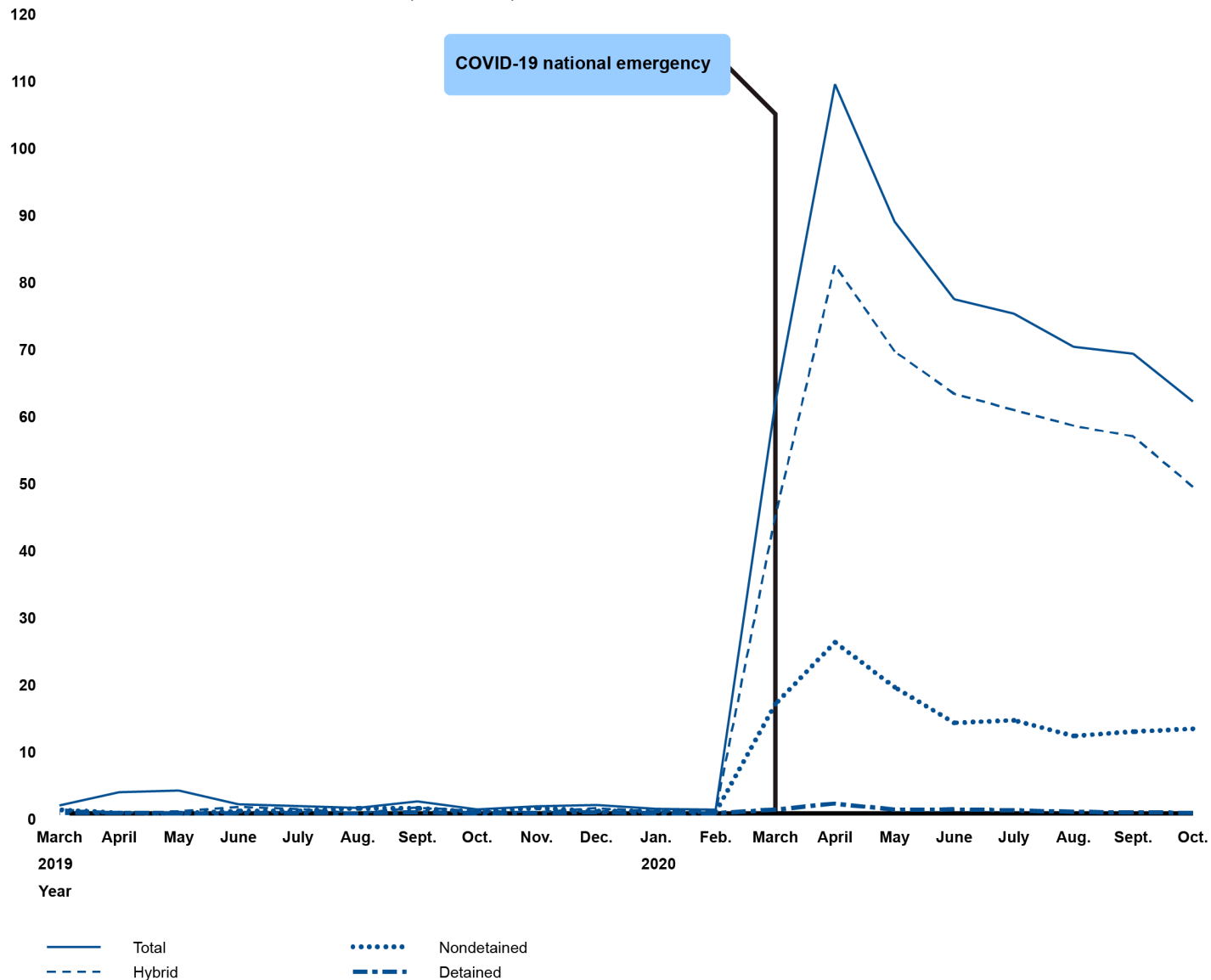
⁷²Immigration courts might schedule certain categories of cases earlier, according to officials. For instance, immigration judges that preside over hearings with juvenile respondents said that they have to review cases and ensure that they will hear those cases before the juvenile ages out of juvenile status at age 18.

through October 2020, EOIR continued close to 600,000 hearings due to court closures (see fig. 11).⁷³

⁷³EOIR officials said that a large increase in continuances due to court closures is attributable to COVID-19 in the spring of 2020, although they said that some court closures in summer of 2020 are also attributable to protests in certain cities across the country.

Figure 11: Executive Office for Immigration Review's (EOIR) Continuances Indicating Court Closures, by Court Type, from March 2019 through October 2020

Number of continuances attributed to court closures (in thousands)



Source: EOIR data. | GAO-21-104404

Notes: A detained court is a court where detained respondents comprised at least 95 percent of cases completed in the last year. Similarly, a non-detained court is a court where non-detained respondents comprised at least 95 percent of cases completed in the last year. Any court that does not meet the thresholds for either the detained or non-detained court is a hybrid court, which has a combination of both detained and non-detained respondents. Hearing adjournments are entered on a number of bases, including continuances indicating court closures (or other circumstances), case completions at or prior to hearing, and instances in which the date of a hearing was entered

incorrectly and could not be rectified, among other reasons. A continuance occurs when an immigration judge temporarily adjourns or postpones the case until a later date, for good cause. See 8 C.F.R. §§ 1003.29 (Continuances), 1240.6 (Postponement and adjournment of hearing). Continuances occur over the normal course of a case but also occur when an event delays the final decision of a case. We requested data in two parts to ensure up-to-date data. Data from October 2017 through December 2019 are as of October 2020. Data from January 2020 through October 2020 are as of January 2021. The President declared COVID-19 a national emergency on March 13, 2020.

Conclusions

The COVID-19 pandemic poses a particular challenge to federal agencies, such as EOIR, that have continued certain operations during the pandemic. To carry out its essential mission of adjudicating immigration cases, EOIR established health and safety measures at the courts such as social distancing measures. However, EOIR lacks documented mask-wearing guidance specifically tailored to the courtroom setting. Issuing guidance on mask-wearing tailored to the immigration courtroom would help ensure that court staff and visitors clearly understand mask-wearing requirements, particularly as public health guidance evolves and, as a result, possibly lower the risk of COVID-19 transmission in immigration court hearings. In addition, EOIR developed processes to respond to COVID-19 exposures in immigration courts. However, EOIR did not maintain updated guidance that reflected current processes and criteria used when responding to COVID-19 exposures. By updating its guidance, EOIR can better preserve the institutional knowledge of the agency's processes, for example, when senior staff leave the agency. Further, disseminating this guidance to all court staff could help ensure that staff are aware of the processes for responding to COVID-19 exposures and feel more assured of their own health and safety. Additionally, EOIR ceased holding regular meetings with stakeholders in 2017, and during the pandemic, stakeholders told us they lacked avenues to engage with EOIR on key matters that affected their health and safety. EOIR held its first stakeholder meeting in May 2021 after a gap of about 4 years. However, it is too soon to determine EOIR's plans for future stakeholder engagement. Taking additional steps to regularly engage with court stakeholders would help EOIR maintain positive relationships and help address stakeholders' court operations and health and safety concerns.

Recommendations for Executive Action

We are making the following four recommendations to the Executive Office for Immigration Review:

The EOIR Director should issue guidance for EOIR staff and visitors on mask-wearing requirements that is tailored to immigration courtrooms. (Recommendation 1)

The EOIR Director should update EOIR's internal guidance for responding to COVID-19 exposures in immigration courts to reflect current processes and criteria used in decision-making. (Recommendation 2)

The EOIR Director should distribute the updated internal guidance on responding to COVID-19 exposures in immigration courts to all staff at EOIR headquarters and immigration courts. (Recommendation 3)

The EOIR Director should take additional steps to ensure that the agency regularly engages with court stakeholders about matters affecting court operations and their health and safety. (Recommendation 4)

Agency Comments

We provided a draft of this report to DOJ and DHS for review and comment. In an email, an Associate General Counsel at EOIR stated that the agency concurred with the recommendations. EOIR provided technical comments, which we incorporated as appropriate. DHS also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Attorney General, and the Secretary of Homeland Security. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix II.



Rebecca Gambler
Director, Homeland Security and Justice

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The Honorable Richard Shelby
Vice Chairman
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United States Senate

The Honorable Ron Wyden
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The Honorable Mike Crapo
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United States Senate

The Honorable Amy Klobuchar
United States Senate

The Honorable Sheldon Whitehouse
United States Senate

Appendix I: Respondents' Access to Legal Counsel and Resources during the Coronavirus Disease 2019

This appendix provides additional information on aspects of respondents'—foreign nationals charged as removable and placed in immigration court proceedings due to alleged violation of U.S. immigration laws—access to legal counsel and other legal resources during the Coronavirus Disease 2019 (COVID-19) pandemic. We obtained information through interviews with headquarters officials from the Executive Office for Immigration Review (EOIR), and from five organizations that subcontract with the Vera Institute of Justice (Vera), which administers EOIR's Legal Orientation Program (LOP) and LOP for Custodians of Unaccompanied Alien Children (LOPC).¹ We also analyzed documentation from EOIR on the LOP and LOPC, including summary reports from Vera and its subcontractors containing data on the number of program participants and legal access services provided. We assessed the reliability of this data by reviewing related documentation on the LOP and LOPC program, interviewing knowledgeable officials, and testing the data for obvious errors. We determined the data were sufficiently reliable for the purposes of describing the LOP services provided and the LOPC participants and services provided during the COVID-19 pandemic. We also met with detention facility operators from six detention facilities and officials from the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) field offices responsible for overseeing these facilities.² Lastly, we interviewed private bar attorneys from three organizations who represent detainees in some of the immigration court proceedings included in our analysis of objectives one through three, as described earlier in the body of the report.

¹We selected three LOP and two LOPC subcontractors to represent diverse geographic locations, co-located in the same city as the immigration courts included in our analysis, and, for LOP providers, ensure there is at least a moderate detainee population in the facilities served by the provider, indicated by an average daily population of detainees that is at least 20 percent of the facility's capacity.

²We leveraged audit work included in another GAO report, GAO, *Immigration Detention: ICE Efforts to Address COVID-19 in Detention Facilities*, [GAO-21-414](#) (Washington, D.C.: June 30, 2021), to help us collect information from detention facility operators and ICE officials overseeing these facilities. We selected these six detention facilities to represent variation among several factors, including geographic location, facility type, average detainee populations, and the number of COVID-19 cases identified at the facility. See [GAO-21-414](#) for additional information on the criteria used to select these detention facilities. ICE is responsible for providing safe, secure, and humane confinement for detained foreign nationals while they wait for resolution of their immigration cases or removal from the U.S. ICE owns and operates some of its detention facilities. Others are owned and operated by private companies through contracts with ICE, or owned by state or local governments or private entities and operated under agreements with ICE.

EOIR's Legal Orientation Programs during the COVID-19 Pandemic

EOIR established the LOP and the LOPC to provide legal information to targeted populations regarding immigration court processes and possible forms of relief from removal.³ LOP, which EOIR established in 2003, provides legal information to individuals in detention who are awaiting their removal proceedings regarding their rights and the immigration process to assist them in making informed decisions earlier in immigration court proceedings. LOPC, which EOIR established in 2010, provides legal orientation presentations to custodians of unaccompanied children released from custody from the Office of Refugee Resettlement, to help ensure the child's appearance at all immigration court hearings.⁴

Since 2005, EOIR has contracted with Vera to administer LOP and LOPC. Vera subcontracts with nonprofit legal service organizations (providers) across the country to provide LOP and LOPC services, such as group and individual legal orientations, self-help workshops, and pro bono legal referrals. As of April 2021, providers offered LOP services at 43 detention facilities across the U.S. and LOPC services in 15 cities. LOPC also operates a national call center that provides orientations for custodians regardless of the respondent's location. A LOP subcontractor also operates the LOP Information Line which provides limited-scope services via telephone to individuals in immigration detention facilities across the U.S. and serves to supplement in-person LOP services.⁵

³EOIR oversees other programs aimed at increasing respondents' access to information and raising the level of representation, such as the Recognition and Accreditation Program, which aims to increase the availability of competent immigration legal representation for low-income and indigent persons. For the purposes of this report, we focused on EOIR's LOP and LOPC.

⁴ICE must transfer unaccompanied children—minors under 18 years of age who lack lawful immigration status and do not have a parent or legal guardian present or available in the U.S. to provide care and physical custody—to the Department of Health and Human Services' Office of Refugee Resettlement's custody within 72 hours of determining that they are unaccompanied children. See 8 U.S.C. § 1232(b)(3); 6 U.S.C. § 279(g). The Office of Refugee Resettlement is also responsible for identifying qualified sponsors in the U.S. who will take custody of the children once they leave Office of Refugee Resettlement shelters and are awaiting immigration proceedings.

⁵Individuals may access the LOP Information Line through DHS's pro bono phone platform in all ICE adult detention facilities. Detained individuals can make free calls to the information line at a maximum length of 15-minutes per call. The LOP Information Line began taking calls in September 2019. ICE notified all field offices of the availability of the information line and asked that detention facilities post a flyer (in English and translated into Spanish) informing detainees of the information line in May 2020 and again in May 2021 (translated into nine languages).

See table 2 for a summary of the core services typically provided through the LOP and LOPC.

Table 2: Core Legal Orientation Services Provided through the Executive Office for Immigration Review (EOIR)

Legal Orientation Program core services	Description
Group or individual orientations	Provide an overview of immigration removal proceedings, the range of rights available to detained individuals, and forms of relief from removal that may or may not be available to them.
Self-help workshops	Assist small groups of individuals in understanding the procedures to be followed in pursuing potential forms of relief, voluntarily departing the country, or providing guidance on other topics, such as how to prepare for a bond hearing.
Pro bono referrals	Refer detained individuals to pro bono legal services, where available.
Legal Orientation Program for Custodians of Unaccompanied Alien Children core services	Description
Group or individual orientations	Provide an overview of the immigration court removal process to custodians of unaccompanied children, responsibilities of custodians in the immigration adjudication process, including ensuring that children appear for immigration hearings, and what forms of relief may be available to them.
Follow-up sessions	Provide information to a custodian of an unaccompanied child following an initial orientation.
Self-help workshops	Inform and assist small groups of custodians and unaccompanied children in understanding the relevant laws and procedures to be followed on a topic of interest, such as pursuing particular forms of relief.
Pro bono Referrals	Refer custodians of unaccompanied children to pro bono legal services, where available.

Source: EOIR documents. | GAO-21-104404

EOIR officials said that near the beginning of the pandemic, approximately March 2020, most LOP and LOPC providers decided to switch from in-person services to offering virtual and remote services, with a few exceptions where providers offered ad hoc, in-person services. EOIR ratified an agreement with Vera on March 30, 2020, that set forth the conditions for Vera and the providers to perform the LOP and LOPC services at an alternate work site on a regular basis (i.e., telework) during the COVID-19 pandemic.⁶ Additionally, under this telework agreement, EOIR increased the frequency that providers are to report data on services to Vera from monthly reports, prior to the pandemic, to weekly reports, according to EOIR officials and providers we interviewed.

⁶The 2017 blank purchase agreement between EOIR and Vera specifies that on-site presenters should provide LOP and LOPC services; however, subcontractors may telework during a pandemic influenza or other national emergency. According to EOIR, DOJ extended the blanket purchase agreement with Vera by 3 months on May 27, 2021.

Providers developed their own remote services plan under the telework agreement for COVID-19, with some assistance from Vera. According to some LOP and LOPC providers we spoke with, Vera discussed options for virtual or remote services with the providers and gave examples of work models that could be implemented. Staff from another provider said they developed their remote service model themselves, with minimal guidance from Vera or EOIR, and Vera reviewed and approved the model. The following are examples of virtual or remote services LOP and LOPC providers offered during the pandemic.

- **Examples of LOP services during the pandemic.** The three LOP providers we spoke with noted various steps they took to transition to virtual or remote LOP services during the pandemic. For example, regarding group orientations, one provider recorded a video, in both English and Spanish, of a group orientation that the detention facility operator is to play once per week for the detainees. Two other providers that also prerecorded videos for group orientations said that the detention facility operators show the video to detainees as part of the intake process. In addition, LOP providers told us how they established different mechanisms to meet with detainees on an individual basis. Two providers we spoke with established a process with the detention facility whereby facility staff schedule phone or video call appointments for the detainee to call the provider. Another provider established a hotline that detainees could call for individual orientations and follow-up questions 5 days a week. Detainees can call the hotline using DHS's pro bono platform that provides free phone access for detainees to call entities that provide services such as legal support, including LOP providers.⁷ LOP providers stated they may also mail hard-copy documents to detainees, such as legal materials, or materials that provide the same information typically addressed in a group orientation. One provider said that, if needed, detention facility staff, such as the law librarian, may scan in and share detainees' documents and forms to the provider to review.
- **Examples of LOPC services during the pandemic.** The two LOPC providers we contacted described several steps they took during the pandemic to continue certain LOPC services. For example, one provider we spoke with switched to provide the majority of services over telephone or video phone call at the beginning of the pandemic,

⁷In April 2020, DHS provided approximately 520 free phone minutes to approximately half of the detainees at ICE detention facilities to mitigate the effect of ICE's restriction against family and friend in-person visitation during the pandemic. ICE officials told us in May 2021 that ICE continues to offer additional telephone minutes to these detainees.

including group and individual orientations and workshops on applying for asylum and other workshops for unrepresented respondents. To encourage greater participation, the provider offers these sessions more frequently, as well as contacting custodians directly to encourage participation. The provider also mails legal forms and other paperwork to the custodians with instructions to return forms by mail rather than in person. The provider said that it plans to resume in-person orientations at one site starting in April 2021, based on the request of the LOPC participants.

EOIR officials said that the LOP and LOPC providers faced some technological challenges in providing virtual or remote services during the COVID-19 pandemic. As described above, most providers decided to provide virtual services during the pandemic, and the provider depends upon the technology infrastructure at each detention facility to provide such services. This infrastructure includes private telephone lines, computers or kiosks, or tablets. While some detention facilities have technology for detainees to contact providers and receive virtual services during the COVID-19 pandemic, some facilities faced challenges, according to EOIR officials. For example, one provider stated that the detention facility could not always provide private phone lines for the detainees to call the provider for LOP services, and other detainees may have been able to overhear those phone conversations.

Providers also noted that they experienced logistical challenges to providing virtual or remote services. For example, one provider described a situation where, unlike the provider's other two sites, the provider was unable to set up scheduled appointment times for detainees at two facilities to contact the provider's staff. Further, the detainees experienced challenges calling the provider's hotline through the pro bono platform to place a free call, such as navigating the directions to place the free call. Instead, the detainees used their own personal phone accounts to call the provider, or detainees called the provider on a collect call. To reach specific detainees, the provider must leave a message for a detainee. Prior to about March 2021, the provider stated that the detention facility staff may not have been relaying to the detainee when they should return the provider's call, though the provider noted that the facility staff have since started providing the information. According to the provider, during the pandemic prior to April 2021, the number of detainees receiving LOP

services at these two facilities dropped sharply because of these challenges.⁸

The same LOP provider also described concerns about reaching detainees who do not speak either Spanish or English, and said that the number of individuals participating in a LOP service who do not speak either Spanish or English has dropped sharply during the pandemic. Staff from the provider also stated being unable to reach these individuals through written materials because the materials are only translated into Spanish and English.⁹ However, ICE officials noted that, working with EOIR, the agency obtained LOP materials in over 30 languages to help provide remote LOP services, including audio files in indigenous languages from Central America. In June 2020, ICE informed field offices that these LOP materials were available on an ICE intranet and could be uploaded to law library computers in ICE detention facilities, where operationally feasible, for detainees to access. Further, detainees may request a referral to a LOP provider through ICE's toll-free phone line, the Detention Reporting and Information Line. The phone line is available to detainees on the facility's pro bono platform, and operators have access to interpreters and can provide services in languages other than Spanish and English, according to ICE.

Although providers noted these technology and logistical challenges, two LOP providers described successes stemming from their switch to virtual or remote services during the COVID-19 pandemic. One provider plans to continue offering the hotline after COVID-19 because it provides another avenue for detainees to receive assistance and services from the provider. Another provider said that the detention facility staff in charge of attorney visits has been responsive to the provider, and there has been a clear line of communication throughout the pandemic. Further, the provider and the staff have worked together to successfully troubleshoot challenges providing virtual services during the pandemic, according to the provider.

⁸According to ICE, there was also an overall decrease in the number of noncitizens housed in detention facilities across the nation in fiscal year 2020 through the third quarter of fiscal year 2021 due to the pandemic.

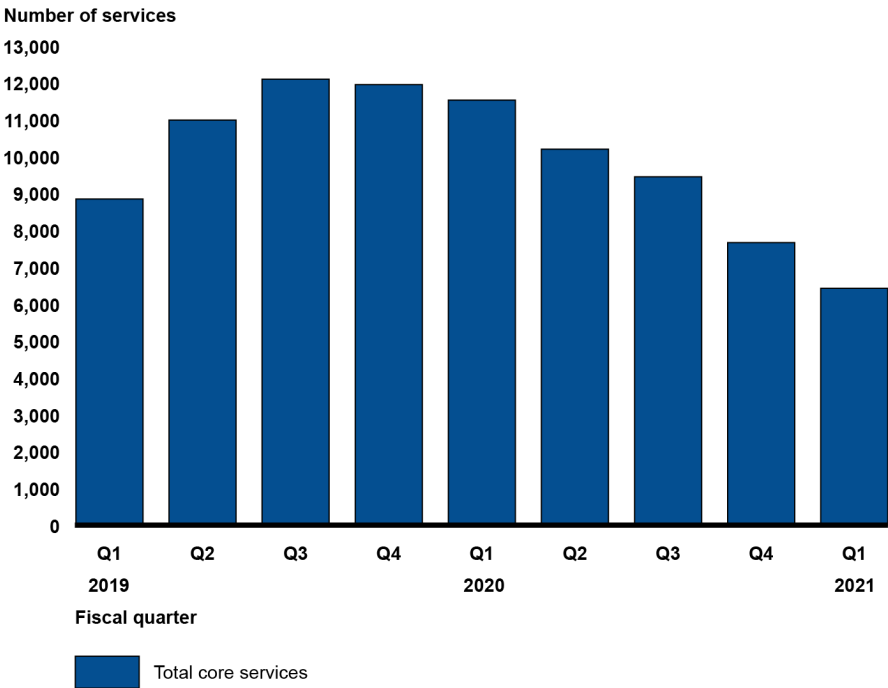
⁹According to ICE, during the pandemic, about 80 percent of the detained population in fiscal year 2020 through the second quarter of fiscal year 2021 was from predominantly Spanish-speaking countries.

EOIR Data on LOP Services

According to data Vera reported to EOIR, the number of core LOP services—group orientations, individual orientations, workshops, and pro bono referrals—providers offered to detainees decreased during the pandemic. The number of detainees receiving these services (participants) similarly decreased. Vera, in an August 2020 report to EOIR on LOP, and one LOP provider we spoke with attributed the decrease in both number of services provided and participants to several factors stemming from the pandemic. For example, the average daily population of detainees in ICE detention facilities generally decreased during the pandemic. In some detention facilities, ICE transferred or released detainees due to COVID-19 related concerns, and in others, the number of new individuals arriving at the detention facility decreased, as we discussed earlier in this report. In addition, according to ICE's website, ICE adjusted its enforcement priorities as of March 2020 to focus enforcement on public safety risks and individuals subject to mandatory detention based on criminal grounds. For all others, ICE's policy indicated that it would exercise discretion to delay immigration enforcement actions until after the crisis or use alternatives to detention, as appropriate.

In April 2020, EOIR asked Vera and providers to track and provide data on additional services they offered as a result of the switch to virtual services during the pandemic, such as the number of written material packets mailed to detainees and general communication interactions with detainees. See figure 12 for the number of core LOP services provided to detainees for fiscal year 2019 through the first quarter of fiscal year 2021.

Figure 12: Total Core Services Provided by the Executive Office for Immigration Review's (EOIR) Legal Orientation Program, October 2018 through December 2020



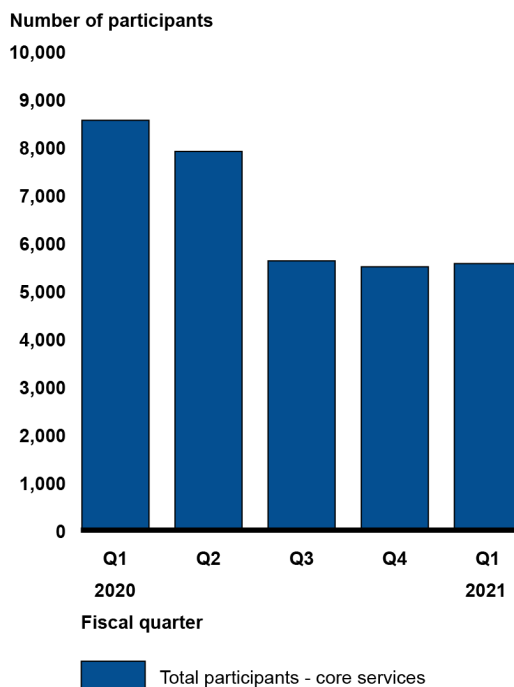
Source: Vera Institute for Justice quarterly reports to EOIR. | GAO-21-104404

Note: Core services include group orientations, individual orientations, workshops for unrepresented respondents, and pro bono placements and referrals, and orientations provided by the LOP information line.

EOIR Data on LOPC Services and Participants

For the LOPC program, the number of custodians participating in core program services—group orientations, individual orientations, workshops, follow-ups, legal screenings, pro bono referrals, and call center orientations—decreased during the pandemic, according to data Vera reported to EOIR. Consistent with the LOP, EOIR asked Vera and LOPC providers to track and provide data on additional services that providers offered as a result of the switch to virtual services during the COVID-19 pandemic. This includes the number of prepared informational packets mailed to custodians and general communications, including inquiries about services. See figure 13 for total custodians participating in EOIR LOPC core services, according to data Vera reported to EOIR.

Figure 13: Custodians Participating in Core Services Provided by the Executive Office for Immigration Review's (EOIR) Legal Orientation Program for Custodians of Unaccompanied Alien Children, October 2019 through December 2020

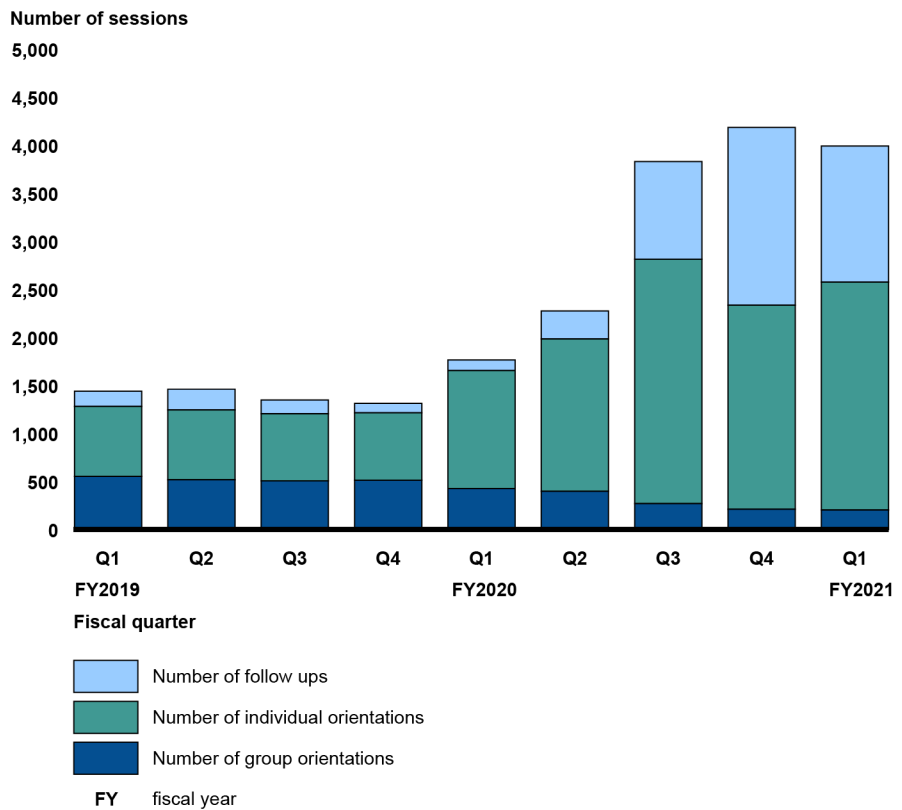


Source: Vera Institute for Justice quarterly reports to EOIR. | GAO-21-104404

Note: These are custodians of unaccompanied children under 18 years old with no lawful immigration status and no parent or legal guardian present or available in the U.S. to provide care and physical custody. 6 U.S.C. § 279(g)(2). Core services include group orientations, individual orientations, follow-up sessions, workshops for unrepresented respondents, legal screenings, pro bono referrals, and orientations provided by the LOPC call center. Vera revised the format and data reported in its quarterly reports to EOIR for the third quarter of fiscal year 2020, including the method used to count the number of custodians receiving LOPC services.

Further, individual orientations reflected a larger proportion of the total services provided during the pandemic relative to other services. For example, staff from one LOPC provider said that due to COVID-19, they provided more individual orientations and that each group orientation, generally, has fewer custodians attending. Additionally, during the pandemic, the LOPC provider reached out to custodians directly more frequently than prior to the pandemic to encourage attendance at an orientation session. See figure 14 for the count of group, individual orientations, and follow-up services, according to data Vera reported to EOIR.

Figure 14: Orientations and Follow-Up Sessions Provided to Individuals by the Executive Office for Immigration Review's (EOIR) Legal Orientation Program for Custodians of Unaccompanied Alien Children, October 2018 through December 2020



Source: Vera Institute for Justice quarterly reports to EOIR. | GAO-21-104404

Note: Unaccompanied children are under 18 years old with no lawful immigration status and no parent or legal guardian present or available in the U.S. to provide care and physical custody. 6 U.S.C. § 279(g)(2). At group and individual orientations, custodians receive a general overview of the immigration court removal proceedings and forms of relief from removal. Follow-up services include additional orientations and self-help workshops.

Additional Perspectives on ICE Detainee Access to Legal Counsel and Other Resources during the COVID-19 Pandemic

ICE officials, detention facility operators, and private bar attorneys offered additional perspectives on detainee access to legal counsel and other resources during the pandemic. ICE officials and detention facility operators noted adjustments made to the process detainees used to access legal counsel and other legal resources during the COVID-19 pandemic. In March 2020, ICE temporarily suspended social visitation (i.e., visits other than those with attorneys) to all ICE-dedicated detention facilities and, as of May 2021, still suspended social visitations. Beginning in April 2020, ICE provided detainees with 520 free minutes for domestic and international phone calls to over half of the detainee population, according to ICE officials, to help mitigate the impact of curtailing personal visits on detainees. As of May 2021, ICE still offered the additional 520 free minutes for telephone calls.¹⁰ Additionally, as was the case prior to the pandemic, all ICE detainees are able to make free calls to legal service providers on EOIR's list of pro bono legal service providers, consular officials, and other government agencies and non-governmental organizations, including the LOP Information Line, described earlier in this appendix.¹¹ ICE also began a Virtual Attorney Visitation program, which provides videoconference options and private booths for detainees to meet with legal representatives. According to ICE officials, ICE plans to implement the Virtual Attorney Visitation program at 14 detention facilities by the end of fiscal year 2021.¹²

ICE officials and detention facility operators we spoke with at five detention facilities said that detainees have been able to contact their

¹⁰According to ICE's website guidance on COVID-19, ICE provided an additional 520 minutes of free domestic or international phone calls per month to detainees at all ICE detention facilities served by Talton Communications (serving approximately 57 percent of the ICE population) starting on April 22, 2020. As of May 2021, ICE officials stated that ICE continues to provide the additional 520 free minutes per month. Other detention facilities, not served by Talton Communications, have provided varying amounts of free minutes to detainees.

¹¹EOIR maintains a list of pro bono legal service providers to inform individuals in proceedings before immigration courts of available pro bono legal services. The list contains information on nonprofit organizations and attorneys who have committed to providing at least 50 hours per year of pro bono legal services before the immigration court location where they appear on the list. The list also contains information on pro bono referral services that refer individuals in immigration court proceedings to pro bono counsel.

¹²In 2021, we reported that ICE had contracts or agreements in place with approximately 148 over-72-hour detention facilities in the U.S., as of the end of fiscal year 2019. GAO, *immigration Detention: Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts*, [GAO-21-149](#) (Washington, D.C.: Jan. 13, 2021).

legal representatives throughout the pandemic, either by phone call, video call, or for in-person visitations.¹³ For example, two facility operators said that they never suspended legal visitations and attorneys have been able to meet in person with their clients throughout the pandemic. Three facility operators said that they did not allow any visitors to the detention centers, including legal representatives, for several months due to a COVID-19 outbreak in each of the detention facilities. During that time, detainees could speak with their attorneys by phone or video call, according to the facility operators with whom we spoke.

Private bar attorneys we spoke with said they experienced challenges contacting their clients who were in ICE detention during the pandemic. As described earlier, detainees are generally unable to receive incoming calls, and private bar attorneys leave messages for the detainee to call them back. During the pandemic, this became more of a challenge, according to attorneys, because they were uncertain when the detainee would call them back and feared potentially missing the phone call. Lastly, some attorneys decided to provide virtual and remote services during the pandemic and chose not to visit detained clients in person. Phone calls are, they said, the primary way to communicate with their clients. Thus, missing a phone call from a client could mean that the attorney and the respondent may not feel prepared for an upcoming hearing.

ICE officials or facility operators from five detention facilities said that detainees have been able to access the legal resources, such as the facility's law library or legal information databases (e.g., LexisNexis), during the pandemic.¹⁴ According to ICE's detention standards, detention facilities are to provide detainees with access to comprehensive legal materials, including access to a law library and legal reference materials.¹⁵

Due to COVID-19, some detention facility staff we spoke with adjusted aspects of how detainees accessed the law library. For example, ICE

¹³ICE officials from the sixth facility did not discuss detainees' access to in-person legal representatives during the COVID-19 pandemic.

¹⁴The sixth facility operator did not discuss access to legal resources and the facility's law library.

¹⁵Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Performance-Based National Detention Standards 2011*, PBNDS 2011 (Washington, D.C.: revised December 2016).

officials and the facility operator at one facility said that to promote social distancing in the law library, they established a maximum occupancy limit and time limits when using the library. ICE officials from another facility said that the facility closed the law library during the pandemic because the library is small, and it was impossible for detainees to socially distance while in the library. Detainees, however, could still access a legal information database from computers in their dormitory. Two facility operators said that detainees quarantining due to COVID-19 could not access the facility's law library. According to ICE, the facility operator provides a limited number of tablets or mobile technology units that detainees quarantining together need to share among themselves to access online legal resources.

Appendix II: GAO Contact and Staff Acknowledgments

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In addition to the contact named above, Kathryn Bernet (Assistant Director), Winchee Lin (Analyst-in-Charge), Isabel Band, Alejandro Oliva, Benjamin Crossley, Michele Fejfar, Grant Mallie, Jan Montgomery, Sasan J. “Jon” Najmi, Kevin Reeves, and Paras Sharma made key contributions to this report.

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