

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS

In the Matter of CLIENT, <i>Respondent.</i> In Removal Proceedings	File No. A NUMBER
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RESPONDENT’S MOTION FOR IN-PERSON HEARING

Respondent, CLIENT by and through undersigned counsel, moves this court to conduct his individual merits hearing in person rather than by video teleconference. In support of this motion, respondent states as follows:

1. CLIENT is a citizen of COUNtRY. He is presently detained by Chicago Immigration and Customs Enforcement (ICE) at the DENTETION CENTER IN CITY AND STATE.
2. Immigration is scheduled for an Individual Merits hearing on DATE regarding his application for asylum, withholding of removal, and relief under the Convention Against Torture. That hearing is scheduled to take place via video teleconferencing.
3. Although CLIENT recognizes that video teleconferencing is permitted, *see* INA § 240(b)(2)(A)(iii); 8 C.F.R. § 1003.25, he asks that this Court exercise the discretion provided by both statute and regulation to hold his hearing in person.
4. Section 240(b)(4)(B) of the INA requires the court to provide CLIENT with a reasonable opportunity to examine government evidence, present evidence on his own behalf, and cross-examine any witnesses offered in opposition. *See Surganova v. Holder*, 612 F.3d 901, 906 (7th Cir. 2010); *Raphael v. Mukaskey*, 533 F.3d 521, 532 (7th Cir. 2008). If CLIENT is required to appear for his individual hearing via video teleconferencing, this statutory right to a fair hearing will be infringed upon in at least three significant ways.

5. First, the use of video teleconferencing in CLIENTS hearing will likely affect his ability to provide complete testimony in support of his application. CLIENTS claim is based on persecution by the Honduran police. As a result of this persecution, CLIENT feels afraid and apprehensive of individuals in authority, particularly law enforcement officers. If he is required to appear via video conference, CLIENT may not believe himself free to speak openly about these aspects of his claim because at least one guard from the DETENTION CENTER will be present in the room. Even if no officer would act adversely against CLIENT for any testimony against a COUNTRY police officer, CLIENT negative experience with the police inspires fear and intimidation in him. The use of video teleconferencing which would require the presence of a county guard in the room with CLIENT and would therefore have a “chill” effect, and prejudice the fairness of his hearing by “curtail[ing] [his] testimony on matters that go to the heart of the claim.” *Surganova*, 612 F.3d at 906 (internal citation and quotation marks omitted); see *Podio v. INS*, 153 F.3d 506, 510 (7th Cir. 1998).
6. Additionally, video teleconferencing will interfere with the court’s ability to assess CLIENT credibility. “[V]irtual reality is rarely a substitute for actual presence,” and despite advances in technology, video conferencing can “render it difficult for a factfinder in adjudicative proceedings to make credibility determinations and to gauge demeanor.” *Rusu v. INS*, 296 F.3d 316, 322 (4th Cir. 2002); see *Aslam v. Mukasey*, 537 F.3d 110, 115 (2d Cir. 2008). Video conferencing limits the court’s ability to assess credibility in several ways. First, there is a delay between when a question is asked by the court and when it is heard by a respondent. This delay can lead to an impression that the respondent is hesitant in his response when in fact he has not yet heard the question. These technical limitations, especially when coupled with the chilling effect that testifying on video will cause for CLIENT, see *supra* ¶ 5, create a substantial likelihood that the court will be unable to adequately evaluate his credibility via video teleconference.
7. There can be no question that the CLIENT will suffer prejudice if the use of video conferencing limits the court’s ability to assess his credibility. A respondent can show prejudice by pointing to any action by the court that has “‘the potential for affecting the outcome’ of the proceedings.” *Rapheal*, 533 F.3d at 533 (quoting *Kuciemba v. INS*, 92 F.3d 496, 501 (7th Cir. 1996)). The court’s credibility assessment is of such importance that “an adverse credibility finding [would] doom [a respondent’s] claimed eligibility as a refugee.” *Hassan v. Holder*, 571 F.3d 631, 637 (7th Cir. 2009); *Musollari v. Mukasey*, 545 F.3d 505, 508-09 (7th Cir. 2008). Thus any action that interferes with this credibility assessment will prejudice the fairness of the proceedings.
8. Finally, video conferencing will make it difficult for CLIENT to meaningfully participate in his own case. Counsel and the Immigration Judge would be

present in the courtroom, and would be able to interact with the CLIENT through the use of a camera and television screen. The fairness of the proceedings would be compromised because CLIENT would not be able to examine documents presented to the judge or confer privately with his lawyer. *See Raphael*, 533 F.3d at 532-33 (holding that petitioner was denied a fair hearing because, due to her remote location, she was unable to examine documents relied upon by the immigration judge). These limitations on his ability to participate may necessitate a continuance of the proceedings, extending the time that CLIENT is detained.

9. The use of video conferencing in this case will also amount to a violation of CLIENT constitutional right to Due Process. Due Process requires that a respondent be able to participate meaningfully in his or her own removal hearing, *see Nazarova v. INS*, 171 F.3d 478, 484 (7th Cir. 1999), and this right is at least as broad as the statutory right discussed above, *see Sarganova*, 612 F.3d at 906. Whenever a respondent's ability at a removal hearing to "be heard at a meaningful time and in a meaningful manner" may be impinged, Due Process requires careful scrutiny of the procedures being implemented. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).
10. The barriers discussed above will limit CLIENT opportunity to participate in his asylum hearing in a meaningful manner and thus will infringe upon his right to Due Process.

Based on the foregoing reasons, Respondent respectfully requests that this Court schedule and in-person Individual Merits Hearing in his case.

Respectfully submitted,

NAME
FIRM
CONTACT INFO

DATE

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS**

In the Matter of <p style="text-align: center;">CLIENT</p> In Removal Proceedings (Detained)	Hon. Judge NAME No. File No. A Individual Merits Hearing: <p style="text-align: center;">DATE AND TIME</p>
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ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the **Motion for an In-Person Merits Hearing** it is HEREBY ORDERED that the motion be

- GRANTED** **DENIED** because:
- DHS does not oppose the motion.
 - The respondent does not oppose the motion.
 - A response to the motion has not been filed with the court.
 - Good cause has been established for the motion.
 - The court agrees with the reasons stated in the opposition to the motion.
 - The motion is untimely per _____.
 - Other:

Deadlines:

- The application(s) for relief must be filed by _____.
- The respondent must comply with DHS biometrics instructions by _____.

Date

Hon. Judge NAME
Immigration Judge

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