

# Expert discusses what COVID-19 means for immigration

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The COVID-19 pandemic has begun to have profound effects on immigration to the United States. We asked Valeria Gomez, a teaching fellow with the Asylum and Human Rights Clinic at the UConn School

of Law to explain what is happening and what the long-term implications may be.

## **How is the pandemic affecting people seeking asylum in immigration courts?**

Most are in limbo. On March 18, 2020, the Department of Justice, which oversees the immigration courts, announced that all hearings for non-citizens who are not being held in immigration detention would be postponed. This decision was made rather late, and only after the Department of Justice received much criticism for continuing to hold hearings that required judges and [court](#) staff, Immigration and Customs Enforcement (ICE) prosecutors, lawyers, [immigrants](#), and witnesses to sit in close quarters in small hearing rooms. People in removal proceedings who are seeking asylum or other relief already face long delays—it can take three years or more to schedule a hearing in some immigration courts—and the cancellation and rescheduling court closures will make those waits even longer. But it will reduce exposure to the COVID-19 virus.

The Justice Department has not, however, suspended hearings for detained immigrants. Instead, the agency has closed only certain court locations on a case-by-case basis; for example, on March 24, the DOJ announced that it would close an immigration court in New York City and another in New Jersey after confirming that individuals with COVID-19 had appeared there. In an unprecedented joint statement, the National Association of Immigration Judges (the judges' union), the union of ICE employees, and the American Immigration Lawyers Association have decried the [federal government's](#) decision to continue to hold hearings during the pandemic. They say the Justice Department's failure to effectively manage the safety issues has subjected immigrants, lawyers, and judges to unacceptable risk.

## **What are conditions like for asylum-seekers who are in detention?**

The risk that we are imposing on detained immigrants cannot be overstated. ICE has reported several positive tests for the coronavirus among employees and detainees at detention centers but has not disclosed how many detained immigrants have been tested. This is extremely troubling because immigrants held in detention cannot implement social distancing guidelines or self-quarantine. On Saturday, a [federal judge](#) ordered the government to "make continuous efforts" to release migrant children from custody because of the dangers to their health.

Continuing to detain immigrants in these conditions poses serious constitutional concerns. The Supreme Court has affirmed that immigration detention is a civil form of custody meant to constrain immigrants as they wait for their day in immigration court, not punish them for a crime. Several organizations have sued the federal government for the release of those in immigration detention. These advocates point out that detainees are not serving sentences for crimes committed—in fact, most people in immigration detention have no criminal history at all—and that confining them in ways that threaten their safety and health violates the U.S. Constitution. The advocates are asking the courts to require the federal government to exercise its discretion and release all detained immigrants, but especially those who are especially medically vulnerable and asylum-seeking families held in family detention centers.

## **What about those waiting in Mexico for asylum hearings in the United States?**

The pandemic is also impacting the tens of thousands of asylum seekers

who have been forced to remain in Mexico while awaiting hearings on their asylum claims. On March 24, the federal government announced that all hearings for asylum-seekers subject to the "Remain in Mexico" policy that were scheduled through April 22 would be rescheduled for a future date. Because many of these individuals live in makeshift camps, shelters, and other insecure living arrangements, however, the federal immigration agencies cannot simply mail out new hearing notices. Asylum-seekers waiting in Mexico will still need to show up at a border checkpoint on their previously scheduled hearing times to be handed a notice of their new hearing date.

Being forced to wait in Mexico has put these [asylum-seekers](#) in an especially vulnerable position. Their living conditions do not allow them to follow recommended social distancing or hygiene guidelines, and they continue to battle crime, exploitation, and food insecurity as they wait for their immigration hearings. The "Remain in Mexico" program has been found by a federal appeals court to be unlawful, but the U.S. Supreme Court has allowed it to go forward pending final resolution of the litigation. The next weeks and months will be especially painful and dangerous for those forced to remain in limbo outside of our borders.

## **How have the travel restrictions imposed to combat the pandemic affected asylum applicants and other immigrants?**

In response to the COVID-19 pandemic, the federal government has imposed a travel ban for most visitors from China, Iran, and most of Europe, with very narrow exceptions for U.S. citizens, lawful permanent residents, and their families, as well for certain noncitizens whose entry would be in the national interest (such as health care workers and those researching vaccines for the coronavirus).

Asylum-seekers and refugees seeking protection from persecution in the United States will find that emergency policies implemented in response to the coronavirus may impede access to the asylum process. For example, as a result of the Centers for Disease Control's order to close the borders with Canada and Mexico to all non-essential travelers, the Department of Homeland Security has announced that Customs and Border Protection officers will no longer process migrants who cannot show proper documentation for entering the United States. Asylum-seekers requesting a credible fear interview—the first step for requesting asylum—will not be processed or scheduled for an interview, and instead will be returned the "country of last transit," meaning Mexico or Canada. This refusal to screen for asylum claims is highly concerning because our international obligations under the Refugee Convention and the Convention Against Torture forbid us from returning individuals to countries where they would be subject to torture or persecution. (Because unaccompanied migrant children are particularly vulnerable, the United States will continue processing and housing unaccompanied children.)

In response to the pandemic, most U.S. embassies across the world have closed their doors, only providing emergency services to U.S. citizens abroad. Because immediate relatives of asylees and refugees must be interviewed by officials at U.S. embassies before being admitted to the United States, families of people already granted asylum or refugee status may be separated for an even longer time. For relatives of asylees and refugees who are still in danger of persecution in their home countries, this may be a particularly dangerous time.

**The Trump Administration's new "public charge" rule is intended to disadvantage immigrants who use government resources. How will this affect those who need tests or medical care for COVID-19?**

One of the most impactful consequences of the public charge rule is the deterrent effect that the new rule has on people who are actually not subject to it. Because the rule itself is quite complicated, many are confused on the kinds of benefits that are excluded from the public charge consideration. People without immigrations status are generally ineligible for federal benefits and generally do not have health insurance.

Although tests for the coronavirus are now free under recently passed legislation, people without access to health insurance may avoid seeking testing or treatment for COVID-19 symptoms because of the sizable out-of-pocket costs that may be associated with unrelated tests or other treatment services.

## **What long-term impact do you see this crisis having on our immigration system?**

The long-term impact of this crisis on the immigration system will be monumental. Immigration courts—already dealing with record-breaking backlogs—will have to reschedule thousands of hearings, meaning that immigrants may have to wait many years before getting their day in court. Many immigrants will likely fall through the cracks, particularly those without legal representation who may not understand the court notices they receive or be able to comprehend and follow constantly changing court practices. It is hard to imagine how immigration judges will be able to manage their bloated dockets in a way that comports with due process unless the government returns to the Obama-era policy of prosecutorial discretion, terminating the removal proceedings of non-citizens with longstanding ties in the United States whose deportation should not be a high priority.

Provided by University of Connecticut

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