

IMMIGRATION VENUE EXCEPTIONALISM

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The notion of “exceptionalism” has characterized immigration law for more than a century. Many constitutional and other traditional norms do not apply in the realm of immigration law. Venue, as prescribed and practiced in Immigration Courts, is yet another example of outlier conduct. Venue, a standard litigation norm, has been seriously perverted. Instead of protecting the parties involuntarily brought into Immigration Court, the immigration venue regulation vests exclusive authority in the government. As a consequence, the government not only has the sole power to initiate hearings about deportability, but it can also choose when and where to locate the proceedings. This allows the government to capitalize on geographical and legal advantages; it incentivizes forum shopping for venues with immigrant-unfriendly law in locations that maximally inconvenience the noncitizen.

Using the highly publicized deportation proceedings against Mahmoud Khalil as an exemplar of this largely invisible aspect of immigration law, this Article describes and exposes immigration venue exceptionalism, the significant role it plays, the unfairness that has developed in recent years, and the urgent need for reform. It outlines a proposal to bring venue for Immigration Court back in line with general venue provisions that apply in U.S. courts. Immigration venue, like venue in general federal litigation, should presumptively be located in the geographic region where the responding party resides or where the underlying conduct took place. If venue is situated elsewhere, a motion to change venue should presumptively be granted in order to achieve proper venue. This approach offers a strategy to restore venue determinations to the pre-remote hearing era when removal proceedings generally took place where the noncitizen was located.

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INTRODUCTION

In the spring of 2025, federal officers swooped into an apartment house lobby in New York City to arrest Mahmoud Khalil, a Palestinian graduate student at Columbia University. Khalil, a lawful permanent resident of the United States, married to a U.S. citizen and imminently expecting their first child, had been living in New York since 2022.¹ With no prior notice of any infraction of U.S. immigration laws, the federal agents handcuffed Khalil and took him to federal immigration detention in New York City. During the middle of the night, again without notice, they transferred him to federal facilities in New Jersey. The next day they transferred him again, this time to a detention center in Louisiana. Only after moving Khalil in shackles to a state 1,400 miles away from his lawyers, wife, neighbors, and community, did the federal officials initiate proceedings to remove him from the United States. They said Khalil’s “presence or activities” endangered the foreign policy of the United States,² but provided no factual details.³ Khalil’s immigration proceedings remained in Louisiana despite multiple efforts by his lawyers to return him to his domicile in New York.

¹ See Jay Offenhartz, *Immigration agents arrest Palestinian activist who helped lead Columbia University protests*, ASSOC. PRESS (Mar. 9, 2025), <https://apnews.com/article/columbia-university-mahmoud-khalil-ice-15014bcb-921f21a9f704d5acdcae7a8> [<https://perma.cc/F4KT-TKA6>].

² INA § 237(a)(4)(C)(i) (codified at 8 U.S.C. § 1227(a)(4)(c)(i)) provides: “An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.”

³ See Notice to Appear, *In re Mahmoud Khalil*, C.R. LITIG. CLEARINGHOUSE (Mar. 9, 2025), <https://clearinghouse.net/doc/156881/> [<https://perma.cc/XJX4-9AKE>]. For a lengthy and detailed discussion of the absence of evidence supporting the government’s arrest and detention of Khalil, see Findings of Fact and Rulings of Law, *AAUP v. Rubio*, No. 25-cv-10685 (WGY) (D. Mass. Sep. 30, 2025).

Even after his release from detention⁴ and reunion with his family, the deportation proceedings continue in Louisiana.⁵

The deportation case against Mahmoud Khalil shines a spotlight on an obscure but critical corner of immigration proceedings that enables a broader pattern of government abuse to flourish under a system of venue exceptionalism that cedes to one party all power over the location of the trial.⁶ Current law allows the government to commence removal proceedings in any Immigration Court in the United States. This permits the

⁴ See Release Order, *Khalil v. Trump*, No. 25-cv-01963 (MEF) (MAH) (D.N.J. June 20, 2025).

⁵ See Oliver Laughland, *US judge rules Mahmoud Khalil can be deported for his views*, THE GUARDIAN (Apr. 11, 2025), <https://www.theguardian.com/us-news/2025/apr/11/mahmoud-khalil-deportation-ruling-immigration> [https://perma.cc/K6AF-8BFY]; Gloria Pazmino & Dalia Faheid, *Judge Denies request to terminate Palestinian activist Mahmoud Khalil's deportation proceedings*, CNN (May 22, 2025), <https://www.cnn.com/2025/05/22/us/mahmoud-khalil-columbia-immigration-hearing> [https://perma.cc/CQ6D-YQ9S]. A description and analysis of the initial immigration proceedings appears in a summary prepared by Global Freedom of Expression. See *In the Matter of: Mahmoud Khalil*, GLOB. FREEDOM OF EXPRESSION COLUM. UNIV., <https://globalfreedomofexpression.columbia.edu/cases/in-the-matter-of-mahmoud-khalil/> [https://perma.cc/6H2G-LV9D]; see Order of Removal issued by Immigration Judge Jamee Comans (Sep. 12, 2025); Exhibit C, Letter to U.S. District Judge Michael Farbiarz (Sep. 17, 2025); *Khalil v. Trump*, No. 2:25-cv-1963 (MEF)(MAH), Document 378. On April 9, 2026, the Board of Immigration Appeals (BIA) affirmed the Order of Removal, stating that a letter from the U.S. Secretary of State that Khalil's presence could have "potentially serious adverse foreign policy consequences" was sufficient evidence of removability. *Matter of M-K-*, 29 I. & N. Dec. 556, 559 (B.I.A. 2026). The BIA did not analyze the constitutionality of the Secretary of State's action and the underlying statute, relegating these matters to a future judicial challenge, *id.* at 563, which would presumably take place in the Fifth Circuit.

⁶ The *Khalil* case is not a unique example of this tactic. In another case, an Indian post-doctoral fellow at Georgetown University in Washington, D.C. was arrested in Virginia and then transferred to Texas, leading the Fourth Circuit to observe: "The government does not contest the district court's finding that it used these tactics to shop for a forum it perceived as more favorable and to make it difficult for Suri's attorney to file a habeas petition on his behalf." *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *5 (4th Cir. July 1, 2025). Other examples of government misuse of geographically distant venue options include Tufts student, Rümeyşa Öztürk (see Vimal Patel et al., *Tufts Student Returns to Massachusetts After 6 Weeks in Immigration Detention*, N.Y. TIMES (May 10, 2025), <https://www.nytimes.com/2025/05/10/us/tufts-rumeysa-ozturk-release.html> [https://perma.cc/SEW8-6YM7]), and Harvard scientist, Kseniia Petrova (see Ellen Barry & Maya Schader, *Russian Scientist Released After Four Months in Federal Custody*, N.Y. TIMES (June 12, 2025), <https://www.nytimes.com/2025/06/12/science/russian-scientist-harvard-release.html> [https://perma.cc/SE86-WJPL]). All of these individuals were detained in the same location as Khalil. See Findings of Fact and Rulings of Law, *AAUP v. Rubio*, No. 25-cv-10685 (WGY) (D. Mass. Sep. 30, 2025) for a discussion of the absence of evidence linking Khan Suri and Rümeyşa Öztürk to violations of U.S. law or policy and their arrests in Virginia and Massachusetts, respectively.

government to select a geographical location that is certainly inconvenient to the noncitizen and predictably hostile to the defenses likely to be raised. Moreover, it permits the government to select the federal appellate courts that will ultimately review the case. Because the federal circuits can vary in their interpretations of immigration statutes, this amounts to allowing the government to choose the law to apply in a particular case. Indeed, in Khalil's case, the government has repeatedly argued that all matters arising in this New York resident's removal proceedings must be litigated in the Louisiana Immigration Court and, if appealed, in the notoriously anti-immigrant Fifth Circuit.⁷

The government made similar arguments in the habeas corpus proceedings in which Khalil is challenging the lawfulness of his arrest, detention, and basis of deportability.⁸ Although venue abuse in habeas corpus litigation is beyond the scope of this Article,⁹ it is noteworthy that the U.S. District Court in New Jersey concluded that it had venue over Khalil's habeas petition, denied the government's motion to transfer the case to the federal court in Louisiana, and proceeded with the habeas litigation.¹⁰ The Third Circuit, in a split decision, overturned

⁷ See Respondents' Brief in Supp. of Renewed Motion to Dismiss or Transfer at 10, *Khalil v. Joyce*, No. 25-cv-01963 (D.N.J. Mar. 20, 2025); *infra* note 177.

⁸ See *Khalil v. Joyce*, 771 F. Supp. 3d 268, 283–84, 289 (S.D.N.Y. 2025).

⁹ For purposes of habeas corpus litigation, venue is located in the federal judicial district in which the government is detaining the individual at the time the writ of habeas corpus is filed. See *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

¹⁰ Khalil was arrested at 8:30 p.m. on March 8, 2025, in New York by immigration agents who said they would take him to the ICE Field Office at 26 Federal Plaza, New York, NY. At 4:40 a.m. on March 9, 2025, hours after the arrest, his lawyer filed a writ of habeas corpus with the U.S. District Court for the Southern District of New York, the federal court encompassing the 26 Federal Plaza location. Sometime that same night, federal immigration officers transported Khalil to the Elizabeth Detention Facility in Newark, New Jersey, located within the U.S. District Court for New Jersey. Around noon on March 9, immigration agents began transporting Khalil to the LaSalle Detention Facility in Jena, Louisiana, located within the U.S. District Court for the Western District of Louisiana, where he arrived in the early hours of March 10. The S.D.N.Y. court determined that Khalil was detained in New Jersey at the time his attorney filed the writ of habeas corpus and accordingly transferred the habeas case to the New Jersey federal court. The S.D.N.Y. court rejected the government's motion to transfer the habeas case to the W.D. La. federal court where, by that time, Khalil was detained, noting that Louisiana would be a seriously inconvenient venue for Khalil and his attorneys. See *Khalil v. Joyce*, No. 25-CV-01935 (JMF) (S.D.N.Y. Mar. 19, 2025) (JustiaLaw); see also *Read the Order Transferring Mahmoud Khalil's Case to New Jersey*, N.Y. TIMES (Mar. 19, 2025), <https://www.nytimes.com/interactive/2025/03/19/nyregion/mahmoud-khalil-nj-transfer-order.html> [<https://perma.cc/UVP9-ADJL>]. The government renewed its motion to dismiss in the New Jersey federal

that ruling. Although the Third Circuit concluded that the New Jersey federal district court had jurisdiction and venue over the habeas petition, it interpreted the immigration statute judicial review provisions to channel all legal questions involved in removal proceedings to Immigration Courts and from there to Petitions for Review filed with a federal court of appeals.¹¹

The government's unilateral power to choose the location of the Immigration Court as well as the pertinent federal appellate court is fundamentally unfair and in conflict with customary rules relating to venue. Venue, the principle that litigation should generally take place where the defending party resides or where the underlying dispute took place, has been turned on its head in the immigration context. This Article is inspired by recent highly publicized examples of government venue manipulation that is enabled by largely unregulated and unfettered practices in immigration cases.¹² These high-profile cases have exposed government tactics that formerly were largely invisible. While it has long been clear that geography and detention often create major roadblocks to litigants and undermine the fairness of immigration proceedings, the growth of remote hearings has starkly exacerbated the inequities in Immigration Court practices.¹³

court, which issued an order on April 1, 2025, concluding that venue was proper in New Jersey, not Louisiana, and denying the motion to dismiss. See *Mahmoud Khalil v. Donald J. Trump*, NYCLU (Mar. 13, 2025), <https://www.nyclu.org/court-cases/mahmoud-khalil-v-donald-j-trump> [<https://perma.cc/8T45-UWVD>]. The New Jersey federal court proceeded with the habeas case, ruled that the statutory provision applied to Khalil was likely unconstitutional, granted a preliminary injunction against his deportation, and ordered Khalil released on bail. Release Order, *supra* note 4. The U.S. Court of Appeals for the Third Circuit upheld the New Jersey federal court's order releasing Khalil on bail. Per Curiam Order, *Khalil v. Trump*, Nos. 25-2162 & 25-2357 (3d Cir. July 30, 2025).

¹¹ On May 6, 2025, the Third Circuit denied the government's petition for permission to appeal the District of New Jersey's ruling that it could exercise habeas jurisdiction over Khalil's petition. Order at 1, *Khalil v. Trump*, No. 25-8019 (3d Cir. May 6, 2025). In January 2026, however, the Third Circuit vacated the district court's judgment and remanded with instructions to dismiss Khalil's habeas petition. *Khalil v. President, United States*, 164 F.4th 259, 269-73, 281 (3d Cir. 2026) (per curiam), *reh'g en banc denied*, Order at 1, Nos. 25-2162 & 25-2357 (3d Cir. May 22, 2026) (6-5 decision), *mandate stayed pending filing and disposition of petition for certiorari*, Order at 1, Nos. 25-2162 & 25-2357 (3d Cir. May 26, 2026).

¹² See *supra* note 6.

¹³ See, e.g., Ingrid V. Eagly & Steven Shafer, *Detained Immigration Courts*, 110 VA. L. REV. 691, 695, 747 (2024); Valeria Gomez, *Geography as Due Process in Immigration Court*, 2023 WIS. L. REV. 1, 40-44 (2023) (noting that video hearings will not cure the due process concerns common to distant immigration courts);

The goal of this Article is to describe and expose immigration venue exceptionalism, the significant role it plays, the unfairness that has developed in recent years, and the urgent need for reform. It proposes that courts employ two presumptions that will realign immigration venue with the traditional framework. First, immigration venue should presumptively be located in the geographic region where the responding party resides or where the underlying conduct took place. Second, if venue is situated elsewhere, a motion to change venue to the respondent's residence or to the place of the allegedly unlawful acts should presumptively be granted.

In the absence of reform, the unconstrained venue designations in Immigration Court ignore the long-respected values of venue while simultaneously encouraging forum shopping. Research has demonstrated that success rates vary widely in different Immigration Courts so that the geographic location of deportation hearings can materially affect the outcome.¹⁴ Similar outcome discrepancies occur among the federal circuit courts that provide judicial review, as the government is well aware.¹⁵ Indeed, it has become increasingly obvious that the government exploits its unilateral venue power by strategically situating removal proceedings, particularly of individuals in detention, in circuits with immigrant-unfriendly precedents.¹⁶

César Cuauhtémoc García Hernández, *Due Process and Immigrant Detainee Prison Transfers: Moving LPRS to Isolated Prisons Violates Their Right to Counsel*, 21 BERK. LA RAZA L.J. 17, 41–42 (2011).

¹⁴ See, e.g., JAYA RAMJI-NOGALES, ANDREW I. SCHOENHOLTZ & PHILIP G. SCHRAG, REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM 33–60 (NYU Press 2009); see also U.S. GOV'T ACCOUNTABILITY OFF., GAO-08-940, U.S. ASYLUM SYSTEM: SIGNIFICANT VARIATION EXISTED IN ASYLUM OUTCOMES ACROSS IMMIGRATION COURTS AND JUDGES (2008) [hereinafter GAO-08-940].

¹⁵ See GAO-08-940, *supra* note 14, at 77–88. At the time of this research, the Fourth, Fifth, and Eleventh Circuits had the lowest remand rates, under 5%. *Id.* at 92. The particular affirmance or remand rates associated with individual circuits vary over time but EOIR only reports the number, not the source of the remand. EXEC. OFF. FOR IMMIGR. REV., *EOIR Adjudication Statistics: Circuit Court Remands Filed* (Oct. 12, 2023), <https://www.justice.gov/eoir/page/file/1199211/dl> [<https://perma.cc/Q4CD-MDZ4>].

¹⁶ See, e.g., Eagly & Shafer, *supra* note 13, at 748; Laila Hlass & Mary Yanik, *Immigrants from Around the Country Keep Getting Detained in Louisiana, It's No Coincidence*, N.Y. TIMES (Apr. 29, 2025), <https://www.nytimes.com/2025/04/29/opinion/immigrants-louisiana-ice-detention.html> [<https://perma.cc/D27W-CAP4>]. These authors had previously exposed the prolonged and often unlawful immigration detention system in Louisiana. Hlass & Yanik, *No End in Sight: Prolonged and Punitive Detention of Immigrants in Louisiana*, TUL. U. L. SCH. IMMIGR. CLINIC (May 2021), <https://law.tulane.edu/sites/default/files/TLS%20No%20End%20In%20Sight%20Single%20Pages%20FINAL.pdf> [<https://perma.cc/K524-Z5KM>].

This is not a new problem, but it has intensified in recent years. The geometric growth in remote Immigration Court hearings, with judges in one location, defending parties in another, and counsel in a third, has complicated the identification of the legally appropriate venue of a particular case.¹⁷ Moreover, in the past, the *Chevron* doctrine worked to minimize circuit court splits in immigration cases because it required substantial deference to agency interpretations of the Immigration and Nationality Act (INA).¹⁸ The overruling of *Chevron* in 2024 by *Loper Bright Enterprises v. Raimondo*¹⁹ is likely to lead to increased divergences among the regional federal appellate courts, and, in turn, to increased Immigration Court forum shopping. Most significantly, as the Khalil saga demonstrates, the current federal administration has rejected the norms that governed immigration court hearings in the past, choosing to adopt tactics to maximize the hardship to those charged with being deportable from the United States.

Using the venue issues presented by the Mahmoud Khalil removal proceedings as a template, this Article analyzes immigration venue exceptionalism. Part I briefly summarizes the contrast between general venue concepts in the U.S. legal system and venue in Immigration Court. It also highlights the significant consequences that accompany venue selection in Immigration Court. Part II turns to the growth of remote Immigration Court hearings that employ video-teleconferencing (VTC) and/or telephones, and the venue challenges they have posed, particularly in cases where the government is detaining the noncitizen.²⁰ Part III addresses the potential usefulness of motions to change venue as a remedy to ameliorate unfair venue selection in Immigration Court. Part IV outlines a proposal to bring venue for Immigration Court back in line with general venue provisions that apply in Article III courts. Immigration venue, like venue in general federal litigation, should

¹⁷ Jayanth K. Krishnan, *Venue by Zoom: Embracing an Immigrant Choice Model of Litigation*, U.C. DAVIS L. REV. (forthcoming 2026).

¹⁸ *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). “[P]rinciples of *Chevron* deference are applicable” in the immigration context. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 424 (1999).

¹⁹ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

²⁰ This Article will use the term “remote” to describe hearings or other court appearances that take place over the telephone or, even more commonly, via a video link. Many reports and articles, including some authored by EOIR, use terminology such as video-teleconference or “VTC” or “internet” to refer to hearings where the parties are not all physically present in the same room. From time to time, this Article may employ those terms.

presumptively be located where the responding party resides or where the allegedly unlawful acts occurred. If venue is situated elsewhere, a motion to change venue should presumptively be granted in order to achieve proper venue. To effectuate these presumptions, this proposal suggests two guidelines for Immigration Judges, so that they can better inform parties of the venue possibilities and consequences.

This approach offers a strategy to restore venue determinations to the pre-remote hearing era when removal proceedings generally took place where the individual resided. In the absence of legislative or regulatory constraints on immigration venue, it is important to recalibrate current agency practice so that venue exceptionalism no longer reigns at Immigration Court.

I

VENUE EXCEPTIONALISM IN IMMIGRATION COURTS

Immigration Court proceedings turn venue upside down.²¹ This departs from more than two hundred fifty years of venue law that historically has protected the defending party. The divergence has not been authorized by Congress and does not reflect a national legislative policy concerning Immigration Court adjudication. In order to understand the breadth of the deviation from traditional venue law, this section briefly reviews the legal principles undergirding venue in both criminal and civil contexts. Its goal is to make obvious the subversion of venue values in current Immigration Court proceedings.

A. Traditional Venue Constraints

The common law approach to venue has left a powerful legacy in both constitutional and statutory provisions circumscribing the geographical location of lawsuits. The common law viewed venue as a legal protection for defendants, the parties involuntarily brought into court.²² In early days in England, trial venue was determined by the locale where the underlying events took place. Jurors relied on their personal knowledge of the facts, which therefore meant that jurors needed to be local

²¹ See Peter I. Markowitz & Lindsay C. Nash, *Constitutional Venue*, 66 FLA. L. REV. 1153, 1197–1205 (2015) (describing venue in immigration detention matters as the “constitutional floor”).

²² See Rosa Hayes, *Venue Diversion*, 25 WIS. L. REV. 147, 154–55 (2024); see also Allan R. Stein, *Forum Non Conveniens and the Redundancy of Court-Access Doctrine*, 133 U. PA. L. REV. 781, 798–99 (1985).

residents.²³ After the law no longer required the jury to have first-hand knowledge, English common law continued to center venue where the dispute arose, and this had the advantage of generally being convenient for the witnesses and the parties.²⁴ In colonial America, where distances were vast and transportation was slow, the place of trial sometimes became politically controversial. British threats to try rebel colonists in England, far from home, were included in the prominent grievances set forth by the Declaration of Independence.²⁵ Some years later, residents of Kentucky threatened to withdraw from the Union unless a trial court was established in their area.²⁶

Thus, as the United States formed a new legal system, adopted a Constitution, and enacted statutes, the geographical setting of litigation was a prominent concern. The developing federal legal system created venue protections for defending parties in both criminal and civil matters, and both are relevant to venue in proceedings to remove an individual from the United States.

As a formal matter, immigration law is considered to be civil.²⁷ Nonetheless, venue laws that protect those accused of crimes are relevant to the immigration context. The consequences of removal from the United States are often as severe as or more severe than criminal punishment. Banishment from the country where an individual has resided for years and where their children, spouses, and community remain is an

²³ See Richard D. Freer, *History of General Venue Requirements*, in 14D FED. PRAC. & PROC. JURIS. § 3802 (Wright & Miller eds., 4th ed. 2025); William W. Blume, *Place of Trial of Civil Cases*, 48 MICH. L. REV. 1, 37 (1949); Stein, *supra* note 22.

²⁴ See Blume, *supra* note 23, at 37; see also Stein, *supra* note 22, at 799 (“Eventually, [in England] all transitory actions could be brought wherever the defendant was found, but the defendant as a matter of course could move for transfer to the county where the cause of action arose, presumably the place where evidence would be most accessible.”).

²⁵ See Blume, *supra* note 23, at 36–37. The Declaration of Independence states:

The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world . . . [He has approved Legislation for] transporting us beyond Seas to be tried for pretended offences.

The Declaration of Independence para. 21 (U.S. 1776).

²⁶ Blume, *supra* note 23, at 36.

²⁷ See *Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893); *Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952); *Padilla v. Kentucky*, 559 U.S. 356, 365–66 (2010).

exceedingly harsh penalty that is intensified by a ban against return.²⁸

In the criminal law setting, venue limitations are so sacrosanct that the U.S. Constitution includes two provisions:

The Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed.²⁹

In all criminal prosecutions, the accused shall enjoy the right to a . . . trial [in] the State and district wherein the crime shall have been committed.³⁰

The Federal Rules of Criminal Procedure provide additional geographic criteria plus several rationales:

[T]he government must prosecute an offense in a district where the offense was committed. The court must set the place of trial *within the district* with due regard for the *convenience of the defendant*, any victim, and the *witnesses*, and the *prompt administration of justice*.³¹

Even if the significance of criminal law venue provisions is discounted for immigration proceedings, civil litigation rules remain of paramount importance. Although the U.S. Constitution is silent concerning venue for civil cases, venue provisions that assure the convenience of the defendant have long been the guiding principle in U.S. courts. The very first legislation regulating federal courts, the Judiciary Act of 1789, commanded:

[N]o civil suit shall be brought . . . against an inhabitant of the United States . . . *in any other district than that whereof he is an inhabitant* . . .³²

The statute also authorized venue in a federal judicial district where the defendant was served with process, but this was restricted by the geographic limits in which a court official could serve process.³³ It was further limited by the common law notion that all local actions must be filed in the federal judicial district where the land in question was located.³⁴

²⁸ A removal order can result in a three, five, ten year, or permanent bar to admission. See INA § 212(a)(9) (codified at 8 U.S.C. § 1182(a)(9)).

²⁹ U.S. CONST. art. III, § 2, cl. 3 (emphasis added).

³⁰ U.S. CONST. amend. VI (emphasis added).

³¹ FED. R. CRIM. P. 18 (emphasis added).

³² 1 STAT. 73 (1789) (emphasis added).

³³ See Freer et al., *supra* note 23; see also Stein, *supra* note 22, at 799.

³⁴ See Blume, *supra* note 23, at 35.

In this way, the venue safeguards in the United States in the late eighteenth and nineteenth centuries centered around the defendant's residence.³⁵ Indeed, venue became known as the defendant's "personal privilege."³⁶ Then, as now, improper venue constituted grounds for dismissing a lawsuit.³⁷ Congress enacted specialized provisions to allow a broad array of courts to exercise venue in certain complicated litigation scenarios,³⁸ but the default venue was the federal district where the defendant resided.³⁹

This shifted somewhat in the early twentieth century when Congress expanded the venue options for individual plaintiffs in suits against federal agencies, authorizing suits where the plaintiff's claim arose as well as where the federal defendant resided.⁴⁰ These expansions of venue grew out of congressional efforts to level the playing field for the less powerful litigants.⁴¹ Eventually, in 1966 Congress expanded venue in most civil cases, not just those against the government, to include the district connected to the underlying dispute.⁴² Thus, several hundred years later, the general venue provision reclaimed the common law tradition of locating the trial in the district where the dispute arose.

Both common law and twentieth-century notions of venue have now combined to become the default rule in federal civil litigation. Since 2011, Congress has limited venue to the defendant's residence or the place(s) where the underlying conduct occurred:

³⁵ See Hayes, *supra* note 22, at 154–55.

³⁶ *Panama R. Co. v. Johnson*, 264 U.S. 375, 385 (1924); see also Armistead M. Dobie, *Venue in Civil Cases in the United States District Court*, 35 YALE L. J. 129, 131 (1925); Hayes, *supra* note 22, at 155.

³⁷ FED. R. CIV. P. 12(b)(3).

³⁸ For example, Congress enacted specialized venue statutes for suits by banking associations against the Comptroller of Currency (28 U.S.C. § 1394), for suits involving internal revenue taxes (28 U.S.C. § 1396), for interpleader actions (28 U.S.C. § 1397), for patents and copyright litigation (28 U.S.C. § 1400), for shareholders' derivative actions (28 U.S.C. § 1401), and for eminent domain actions (28 U.S.C. § 1403).

³⁹ See Stein, *supra* note 22, at 798–99.

⁴⁰ See *id.*

⁴¹ See Hayes, *supra* note 22, at 157, 161. In addition to providing more venue options in suits individuals filed against federal agencies, Congress provided more venue options for private plaintiffs suing corporate defendants, allowing litigation in judicial districts where the corporations are doing business—and where plaintiffs may have encountered the corporations—as well in districts where the corporate defendants are incorporated and “at home.”

⁴² See Wright et al., *supra* note 23.

A civil action may be brought in—

(1) a judicial *district in which any defendant resides*, if all defendants are residents of the State in which the district is located;

(2) a judicial *district in which a substantial part of the events or omissions giving rise to the claim occurred*, or a substantial part of property that is the subject of the action is situated.⁴³

The first option sets forth the traditional basis for venue. Because parties involuntarily subjected to litigation are likely to face upheaval, financial costs, and threats to property and livelihood, suits in their home district will allow them to obtain lawyers and rely on the support of family, friends, and members of the community during legal proceedings. Relevant evidence, including corroborating witnesses and character witnesses, may also be there.

Under this option the court must ascertain the defendant's residence. For venue purposes, Congress has specified that both citizens and noncitizens lawfully admitted for permanent residence reside in the judicial district in which they are domiciled.⁴⁴ In each case, domicile is a factual question determined by the judge who considers both the physical presence of the individual in the district and their intent to remain there.⁴⁵ The statute specifies that defendants who do not reside in the United States may be sued in any judicial district.⁴⁶ This provision applies to U.S. citizens domiciled abroad as well as to noncitizens.⁴⁷ Tourists fall into this category, along with other short-term inhabitants.

⁴³ 28 U.S.C. § 1391(b) (emphasis added). The third paragraph of the statute reads: "(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." The third option usually comes into play only if the claim arose outside the United States *and* the defendant is outside U.S. territory. It is not relevant to Immigration Court hearings, which are premised on the defendant's presence in the United States. Even in non-immigration related litigation, the third option is rarely triggered in federal court litigation because most disputes filed by plaintiffs relate to a claim that had some effect in the United States and thus fall within the second option. The few suits concerning disputes that arose totally beyond U.S. territory outside the United States typically are against corporations that "reside" in some manner within the United States. See Wright et al., *supra* note 23, § 3806.1.

⁴⁴ See 28 U.S.C. § 1391(c)(1).

⁴⁵ See Freer et al., *supra* note 23, § 3612 (domicile and residence typically coincide; judges make case-by-case inquiry).

⁴⁶ See 28 U.S.C. § 1391(c)(3).

⁴⁷ See Freer et al., *supra* note 23, § 3810.

The statute is silent regarding noncitizens who are domiciled in the United States, although they were not lawfully admitted for permanent residence. This might include those who entered lawfully in nonimmigrant statuses that allowed them to remain for years or decades in the United States.⁴⁸ For example, they might have entered pursuant to an international agreement that authorizes them to carry on multi-year investment activity in the United States.⁴⁹ Or they may have been allowed to enter as transferees from an overseas company charged with executive or managerial duties requiring specialized knowledge.⁵⁰ They may have been admitted as students in lengthy academic programs⁵¹ or been granted the right to remain in the United States for multiple years pursuant to Temporary Protected Status (TPS).⁵² Other noncitizens may have entered unlawfully yet remained for decades. For example, DACA recipients were brought to the United States as young children and they have spent most of their lives in this country.⁵³ Surely, for litigation purposes, individuals who have lived many years in the United States should be considered residents.⁵⁴ Although

⁴⁸ For discussion of nonimmigrant categories, see ALEINIKOFF, MARTIN, MOTOMURA, FULLERTON, STUMPF, & GULASEKARAM, *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 184–222, 231–34 (9th ed. 2021).

⁴⁹ Nonimmigrants who enter pursuant to an international agreement that authorizes them to carry on investment activity in the United States are eligible for E visas. See INA § 101(a)(15)(E) (codified at 8 U.S.C. § 1101(a)(15)(E)).

⁵⁰ Foreign companies can transfer certain employees to work in the United States pursuant to L visas, which may allow a five to seven year stay in the United States. See INA § 101(a)(15)(L) (codified at 8 U.S.C. § 1101(a)(15)(L)); 8 C.F.R. § 214.2(l)(12)(ii).

⁵¹ F visas for students are typically valid for the duration of the student's course of study. See INA § 101(a)(15)(F) (codified at 8 U.S.C. § 1101(a)(15)(F)); 8 C.F.R. § 214.2(f)(5).

⁵² INA § 244 (codified at 8 U.S.C. § 1254a) authorizes the United States to grant temporary protection to individuals from countries that the DHS Secretary has designated as suffering from natural disasters, armed conflict, or other temporary emergency conditions. The U.S. government has frequently extended the period of TPS for decades. For example, the U.S. has authorized TPS for citizens of Somalia continuously since 1991, more than thirty years. It has authorized TPS to citizens of Sudan since 1997, to citizens of Honduras and Nicaragua since 1999, to citizens of El Salvador since 2001, and to citizens of many other countries for multiple years. U.S. DEP'T OF JUST. EXEC. OFF. FOR IMMIGR. REV., *Temporary Protected Status (TPS)* (updated June 2, 2026), <https://www.justice.gov/eoir/temporary-protected-status> [<https://perma.cc/S2NL-NPFU>].

⁵³ Initiated in 2012, the Deferred Action for Childhood Arrivals (DACA) program provides temporary relief from deportation and authorizes work permits to eligible individuals brought to the U.S. as young children without legal status. See ALEINIKOFF ET AL., *supra* note 48, at 709–28.

⁵⁴ In Executive Order 14160 President Trump ordered federal agencies to deny citizenship to children born in the United States to parents who were either

the venue statute does not directly address these situations, the weight of authority indicates that in terms of venue these noncitizens should be considered to reside in the district in which they are domiciled.⁵⁵

The second statutory option, the district(s) where a substantial part of the events related to the claim occurred, ties litigation to geographic locations where evidence is likely to be located.⁵⁶ Access to relevant evidence is an important factor in designing a litigation system that leads to just results. Tying the place of trial to the location of evidence also increases efficiency and can reduce costs.⁵⁷

Applying these traditional venue limitations to the immigration proceedings against Mahmoud Khalil, venue would be proper either where Khalil resides or where the conduct occurred that formed the basis for the government's decision to deport him. Immigration Court in New York would be the proper venue on both of these grounds. First, Khalil is a lawful permanent resident living in New York.⁵⁸ Second, the events that apparently undergird the decision to deport him occurred in New York.⁵⁹ He is not a transient individual. He is a permanent

unlawfully present or lawful but temporarily present. See Exec. Order No. 14,160, 90 FED. REG. 8449 (Jan. 20, 2025). The Supreme Court held that children born in the United States to parents unlawfully or temporarily present are "subject to the jurisdiction" of the United States and are citizens at birth under the Citizenship Clause. *Trump v. Barbara*, No. 25-365, slip op. at 12 (U.S. June 30, 2026). *Barbara* did not construe the federal venue statute or decide where such parents are domiciled for purposes of § 1391(c), but it rejected a categorical status-based theory that unlawful or temporary presence places such persons outside ordinary territorial jurisdiction. See *id.* at 18–21. But cf. *id.* at 3 (Gorsuch, J., dissenting) ("If those parents are not domiciled here, then where *are* they domiciled?" (emphasis in original)).

⁵⁵ See Freer et al., *supra* note 23, § 3810.

⁵⁶ As of 2011, the statutory text has made it clear that in certain cases this option could be satisfied by more than one district: Venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2).

⁵⁷ "Venue . . . is litigant-protective because it inquires into the propriety of the site of proceedings based on the parties' connections to the place and obstacles to a fair proceeding." Markowitz & Nash, *supra* note 21, at 1160. This article provides a comprehensive historical account of the development of venue principles in the United States. *Id.* at 1161–71. "Venue rules generally reflect equity or expediency in resolving disparate interests of parties to a lawsuit in the place of trial." *Burlington Northern R. Co. v. Ford*, 504 U.S. 648, 651 (1992).

⁵⁸ See Findings of Fact and Rulings of Law at 31, *AAUP v. Rubio*, No. 25-cv-10685 (WGY) (D. Mass. Sep. 30, 2025).

⁵⁹ See Ana Ley, *Columbia Activist in Detention Was Public Face of Protest Against Israel*, N.Y. TIMES (Mar. 10, 2025), <https://www.nytimes.com/2025/03/10/nyregion/mahmoud-khalil-ice-louisiana.html> [<https://perma.cc/6HTB-ZXMH>].

resident, married to a U.S. citizen living in New York, and, at the time of his arrest, they were imminently expecting the arrival of their first child in New York.⁶⁰ In addition, he already had a lawyer in New York with whom he had worked on immigration-related matters. Thus, New York is the location where his access to counsel would be the least disturbed. Furthermore, with his wife, neighbors, doctors, fellow students, and others located near Columbia University, New York Immigration Court is also the venue where Khalil would have access to the individuals most likely to provide evidentiary, emotional, logistical, and financial support as he prepared his defenses to deportation. Finally, the initial allegations of removability related to his activities at Columbia University in New York City. Potential witnesses, therefore, would be located there.

Considering separately the conduct underlying the government's claim of injury to the foreign policy of the United States, the Notice to Appear charging Khalil with being deportable was devoid of facts. It seems fair to infer that a substantial part of the allegedly harmful conduct occurred in New York. Khalil was a prominent figure in the political protests on the Columbia University campus in 2023-2024. His photograph appeared in newspapers as a negotiator between student groups and the university administration. He made statements in New York during these demonstrations supporting the rights of Palestinians and decrying the deaths of civilians in Gaza. Some people publicly criticized him in New York and accused him of being in favor of Hamas, an allegation he denied in New York. Therefore, the significant activities related to this deportation proceeding appear to have happened in New York. Certainly, there is no basis to connect the matter to Louisiana, a place where Khalil had never resided and a place where the government's underlying claim did not arise. Similarly, there was no connection between Khalil and Louisiana based on the government's later charge that Khalil had made misrepresentations in 2024 when he applied to become a lawful permanent resident.⁶¹ He had filed his application in New York, not Louisiana.

⁶⁰ Offenhartz, *supra* note 1.

⁶¹ After Khalil's removal proceedings were underway in Louisiana Immigration Court, the government added charges that Khalil had made misrepresentations in his application to adjust status to permanent residence, INA § 237(a)(1)(A) (codified at 8 U.S.C. § 1227(a)(1)(A)), which rendered him inadmissible under INA § 212(a)(6)(C)(i) (codified at 8 U.S.C. § 1182(a)(6)(C)(i)). The adjustment of status adjudication had occurred in New York. See Mem. of Law in Supp. of Petitioner's Motion for Prelim. Injunct'n re Post-Hoc Charge, Khalil v. Trump, No. 25-cv-01963 (MEF-MAH) (D.N.J. July 7, 2025).

B. Legislative Silence on Immigration Venue

The Immigration and Nationality Act is silent about venue. In the absence of legislation, executive branch officials drafted a regulation that rejected all traditional venue considerations and, unsurprisingly, gave sole power to the executive branch. The prosecutor—the Department of Homeland Security (DHS)—can choose any of the seventy-one Immigration Courts located throughout the United States as the venue for proceedings to deport a noncitizen. There are no constraints on the government to choose a geographical location where the noncitizen resides, or a location related to the basis for the charges for deportation. This is at odds with the common law, federal criminal law, federal civil litigation, and even state venue statutes.

The regulations essentially collapse the concepts of jurisdiction and venue, predicated both on the government's choice of where to initiate deportation proceedings. They state:

Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service.⁶²

Venue shall lie at the Immigration Court where jurisdiction vests.⁶³

This is in contrast to the federal court system, where jurisdiction and venue are distinct inquiries. In federal court the jurisdictional analysis asks whether the dispute falls into one of the categories (such as diversity of citizenship or federal question) that federal trial courts are empowered to adjudicate. The venue analysis asks whether a federal court has sufficient geographic connection with the defendant or the underlying conduct that it is fair to proceed with the litigation. If a case comes within one of the approved categories, then all the federal courts in the ninety-four federal judicial districts in the United States are authorized to exercise subject matter jurisdiction over the dispute. Only a few courts in the ninety-four federal judicial districts are likely to have venue, however. Defendants who successfully challenge the venue are entitled to dismissal of the lawsuit, even though the court properly has jurisdiction over the subject matter.

⁶² 8 C.F.R. § 1003.14(a). The “Service” refers to the obsolete Immigration and Naturalization Service (INS) and should be understood to mean the Department of Homeland Security.

⁶³ 8 C.F.R. § 1003.20(a).

The Immigration Court regulation establishing venue wherever jurisdiction exists fails to acknowledge the geographical expanse of the Immigration Court system. Nor does it identify any factors the government should consider in choosing an Immigration Court for a particular case. Effectively, it provides that the government can locate a deportation proceeding in any of the seventy-one separate Immigration Courts located throughout the territory of the United States.⁶⁴

Geography, which traditionally functions as a proxy for fairness to the defendant and efficiency for the litigation, is ignored in immigration venue. Because the immigration regulation confers total power over venue to the government as initiating party and simultaneously ignores traditional venue notions restricting the geographical setting of litigation, immigration venue can lead to unfairness in deportation proceedings. It also allows forum shopping for the law that will apply and for the federal appellate courts that are historically less favorable for the party facing removal from the United States. Khalil's case is a quintessential demonstration of the government's absolute power to choose the venue and the consequent unfairness. Instead of New York, the government has set the removal hearing in the Jena, Louisiana Immigration Court in the rural South.

C. Consequences of Venue Selection

The negative consequence of the government's exclusive and unconstrained power over venue is that it may interfere with the ability of the respondent to defend against removal at the Immigration Court by limiting the respondent's access to counsel, witnesses, and support systems. In addition, the government's selection of venue can determine the legal principles that apply both in Immigration Court and on appeal to federal circuit courts. Although Immigration Courts apply the same federal immigration statutes, different legal rulings often apply in different Immigration Courts because Immigration Court appeals are channeled to specific federal appellate court geographical regions (circuits), and the law evolves differently in different circuits. As demonstrated below, the ability to select the venue of the initial adjudication in Immigration Court can

⁶⁴ See EXEC. OFF. FOR IMMIGR. REV., *Office of the Chief Immigration Judge* (Aug. 11, 2025), <https://www.justice.gov/eoir/office-of-the-chief-immigration-judge> [<https://perma.cc/4MVX-7H4J>].

have great consequences on the substantive immigration law applied to the case.

1. *At the Immigration Court Hearing*

Turning first to the initial hearings, *Refugee Roulette*, a seminal empirical study of disparities in asylum adjudication, examined every stage of the asylum process. Over and over again, it identified stark differences between outcomes in Immigration Courts, both around the country and even within the same building.⁶⁵ After examining a range of factors such as country of origin, gender of applicants as well as of IJs, and professional backgrounds of the judges, the authors conclude that “the result may be determined as much or more by who that official is, or where the court is located, as by the fact and law of the case.”⁶⁶

Other studies have delved deeply into this troubling phenomenon. In 2008, the Government Accountability Office also found “pronounced” and “substantial” differences in asylum outcomes.⁶⁷ A 2010 empirical study conducted by political scientists concluded:

This analysis suggests that judges’ decisions are influenced by prior socialization through a variety of professional experiences that may shape or reflect their policy preferences or values. Thus, we are left with the unsettling conclusion that the judge one faces on the bench may matter as much as the level of threat the applicant faces back home.⁶⁸

Strong statistical evidence confirms the persistence of wide variance in outcomes at different immigration venues. Human Rights First reports that “[g]overnment records . . . show . . . years-long, systemic disparities in asylum adjudications based on the nationality of the asylum seeker and the asylum office handling the case.”⁶⁹ Examining the data in great detail, Transactional Records Access Clearinghouse

⁶⁵ See RAMJI-NOGALES ET AL., *supra* note 14.

⁶⁶ *Id.* at 3.

⁶⁷ The 2008 report published by the Government Accountability Office confirms the wide-ranging disparity rates in IJ decisions. GAO-08-940, *supra* note 14.

⁶⁸ Linda Camp Keith & Jennifer S. Holmes, *U.S. Asylum Decisions: Who You Face on the Bench Is as Important as What You Face at Home*, SSRN (Aug. 10, 2010), <https://ssrn.com/abstract=1656612> [<https://perma.cc/BWR2-FWLZ>].

⁶⁹ *USCIS Records Reveal Systemic Disparities in Asylum Decisions*, HUMAN RIGHTS FIRST (May 2022), <https://humanrightsfirst.org/library/uscis-records-reveal-systemic-disparities-in-asylum-decisions/> [<https://perma.cc/9W98-NF73>].

(TRAC) reports confirm ongoing glaring disparities between Immigration Courts.⁷⁰ For example, the average rejection rate of asylum claims in the Houston Immigration Court is greater than 80%. In contrast, the average asylum denial rate in the New York Immigration Court is 45%. Indeed, four Immigration Judges in New York average a denial rate of only 10%.⁷¹ These wide adjudication differences can be seen in many other Immigration Courts. To take a timely example, the Jena, Louisiana Immigration Court where Khalil was incarcerated, reports high denial rates.⁷² Five of the ten Immigration Judges there deny more than 90% of the asylum cases they oversee.⁷³ The explanation for these troubling differences is elusive but the evidence is clear that specific Immigration Courts (and individual IJs) have reputations based on the differential rates at which they grant or deny relief.

In addition to factors that might differentiate Immigration Courts from one another, such as different applicant pools, different backgrounds and experience of the judges, and distinct court cultures, Immigration Judges in different venues often apply different interpretations of substantive immigration law.⁷⁴ The Board of Immigration Appeals (BIA), the appellate administrative body with national jurisdiction over Immigration Courts,⁷⁵ has directed Immigration Courts to follow the circuit

⁷⁰ *Judge-by-Judge Asylum Decisions in Immigration Courts FY 2019-2024*, TRAC IMMIGR., <https://tracreports.org/immigration/reports/judgereports/> [https://perma.cc/Y5B2-PXMC]. TRAC issued reports detailing disparity rates in asylum case outcomes in 2006 (see *Immigration Judges*, TRAC IMMIGR., <https://tracreports.org/immigration/reports/160/> [https://perma.cc/WS83-NCT4]) and 2007 (see *Asylum Disparities Persist, Regardless of Court Location & Nationality*, TRAC IMMIGR., <https://tracreports.org/immigration/reports/183/> [https://perma.cc/P7A9-E3PZ]).

⁷¹ TRAC IMMIGR., *supra* note 70.

⁷² The most recently reported statistics show the overall asylum denial rate at Jena at 70% whereas the Immigration Court nationwide denial rate for asylum cases is 60.04%. See *Asylum Navigator*, MOBILE PATHWAYS, <https://www.mobilepathways.org/dashboards/asylum-navigator-dashboard> (last visited Aug. 20, 2025).

⁷³ *Id.* During the last 15 fiscal years (FY2008–FY2022), based on the total sum of outcomes, the annual asylum grant rate has ranged from 14.17% (FY2022) to 31.35% (FY2011), and the denial rate has ranged from 16.74% (FY2022) to 54.49% (FY2020). HOLLY STRAUT-EPPSTEINER, CONG. RSCH. SERV., R47504, ASYLUM PROCESS IN IMMIGRATION COURTS AND SELECTED TRENDS 8 (May 15, 2023), <https://www.congress.gov/crs-product/R47504> [https://perma.cc/5DA7-255B].

⁷⁴ See Eagly & Shafer, *supra* note 13, at 748–53 (analyzing multiple factors that distinguish Immigration Judges in detained courts from those who preside over non-detained cases).

⁷⁵ See 8 C.F.R. § 1003.1(g)(1).

precedent of the federal appellate court with jurisdiction over the geographic area where the Immigration Court is located.⁷⁶ Hence, the New York Immigration Court applies Second Circuit interpretations of the immigration law, while Houston and Jena Immigration Courts follow Fifth Circuit interpretations.

Because Immigration Judges are bound to apply the pertinent circuit precedents, advocates in Immigration Court hearings must frame their arguments in accord with the legal standards established by the appropriate federal circuit court. Consequently, the government files a Notice to Appear (NTA), the charging document, with full knowledge of the circuit precedent that will apply in a specific Immigration Court. With sole power to initiate a deportation proceeding, and no constraints on their venue selection, government attorneys may base their filing decisions on the precedent developed in a particular federal circuit. In addition, they may consider the reputations some federal appellate circuits have of favoring the government.⁷⁷ The United States Court of Appeals for the Fifth Circuit

⁷⁶ See *Matter of Garcia*, 28 I. & N. Dec. 693, 695 (B.I.A. 2023) (citing *Matter of U. Singh*, 25 I. & N. Dec. 670, 672 (B.I.A. 2012) (“We apply the law of the circuit in cases arising in that jurisdiction . . .”). See also *Matter of Anselmo*, 20 I. & N. Dec. 25, 31 (B.I.A. 1989) (“Where we disagree with a court’s position on a given issue, we decline to follow it outside the court’s circuit. But we have historically followed a court’s precedent in cases arising in that circuit”). Circuit courts agree. See *Melkonian v. Ashcroft*, 320 F.3d 1061, 1065 (9th Cir. 2003) (“The BIA must . . . follow the decisions of our court, and we will not defer to BIA decisions that conflict with circuit precedent.”). See also *Abdulai v. Ashcroft*, 239 F.3d 542, 553 (3d Cir. 2001); *Bibiano v. Lynch*, 834 F.3d 966, 969 (9th Cir. 2016); *Yang You Lee v. Lynch*, 791 F.3d 1261, 1263–64 (10th Cir. 2015); *Thiam v. Holder*, 677 F.3d 299, 301–02 (4th Cir. 2012); *Sorcía v. Holder*, 643 F.3d 117, 121 (4th Cir. 2011); *Avila v. U.S. Att’y Gen.*, 560 F.3d 1281, 1284–85 (11th Cir. 2009) (per curiam); *Khousam v. Att’y Gen.*, 549 F.3d 235, 249 (3d Cir. 2008); *Moreno-Bravo v. Gonzales*, 463 F.3d 253, 262 (2d Cir. 2006); *Jama v. Gonzales*, 431 F.3d 230, 233 (5th Cir. 2005) (per curiam); *Georcely v. Ashcroft*, 375 F.3d 45, 49 (1st Cir. 2004); *Nwaokolo v. INS*, 314 F.3d 303, 306 n.2 (7th Cir. 2002) (per curiam).

⁷⁷ See Alisa Hartsell & Sarah A. Blue, “Justice by Geography”: *Legal Violence and Asylum in the Fifth Circuit Court of Appeals*, 164 *GEOFORUM* 104339, at 2 (Aug. 2025), <https://doi.org/10.1016/j.geoforum.2025.104339> [<https://perma.cc/RTN9-9FJK>]; Jeevna Sheth & Devon Ombres, *The 5th Circuit Court of Appeals is Spearheading a Judicial Power Grab*, *CTR. FOR AM. PROGRESS* (May 15, 2024), <https://www.americanprogress.org/article/the-5th-circuit-court-of-appeals-is-spearheading-a-judicial-power-grab/> [<https://perma.cc/DW3Z-ABMN>]. The Fifth Circuit is well known for its persistent opposition to the Deferred Action for Childhood Arrivals program, having repudiated it four times. See *Texas v. United States*, 787 F.3d 733, 768 (5th Cir. 2015) (Texas I) (denied stay of preliminary injunction against DAPA & DACA expansion); *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) (Texas II) (affirmed Texas I order enjoining DAPA & DACA expansion), *aff’d* *United States v. Texas*, 579 U.S. 547 (2016); *Texas v. United States*, 50 F.4th 498, 531 (5th Cir. 2022) (Texas III) (found 2012 DACA unlawful but allowed renewals and barred initial requests); and *Texas v. United States*, 126

is a prime example. This court, with jurisdiction over Mississippi, Louisiana, and Texas, has become known for controversial immigration law rulings. Conservative activists frequently file litigation there because Fifth Circuit precedents make their preferred outcomes more likely.⁷⁸

2. *At the Federal Courts of Appeals*

Immigration Court venue dictates the law that will apply at both steps of the appellate process as well as at the Immigration Court proceedings. Individuals denied relief by the Immigration Court can generally appeal to the Board of Immigration Appeals, which applies the pertinent circuit precedent to the case. Individuals who are unsuccessful at the Board of Immigration Appeals can then seek review by the federal appellate court.⁷⁹ They must file the “petition for review . . . with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.”⁸⁰

The federal appellate courts rule independently on the legal issues that arose in the BIA.⁸¹ The different regional federal appellate courts develop their own bodies of case law, with different legal standards sometimes emerging. Indeed, the active docket of immigration cases in twelve federal appellate circuits has resulted in some sharp divergences that can yield disparate outcomes.

Several recent examples shed light on the different circuit approaches and their likely impact on immigration litigation. The statutory provision “particular social group” (PSG) presents recurrent issues in asylum adjudication. There is significant disagreement over the types of groups that this rather

F.4th 392, 422 (5th Cir. 2025) (Texas IV) (affirmed Texas III finding that DACA is unlawful—allowed renewals but upheld bar on initial requests).

⁷⁸ See Hartsell & Blue, *supra* note 77, at 2; see also Sheth & Ombres, *supra* note 77.

⁷⁹ See INA § 242 (codified at 8 U.S.C. § 1252). Federal Circuit Courts of Appeal play a critical role in immigration litigation because they receive petitions challenging agency determinations relating to asylum, criminal convictions, standards of review, statutory interpretation, and, in some instances, eligibility for immigration benefits. Federal circuit court opinions answer the questions posed in specific cases, guide Immigration Courts within the Circuit, and may be persuasive to courts in other circuits in the absence of controlling law.

⁸⁰ INA § 242(b)(2) (codified at 8 U.S.C. § 1252(b)(2)). Pre-1996, the law provided two options for filing the petition for review. See *infra* note 158.

⁸¹ See INA § 242 (codified at 8 U.S.C. § 1252).

amorphous term encompasses.⁸² One particularly contested issue is whether former membership in a gang constitutes a PSG. Several circuits have held that former gang membership qualifies as a PSG.⁸³ In contrast, others, notably the First Circuit, have rejected this interpretation.⁸⁴ Thus, individuals basing asylum claims on persecution directed against them on account of their former membership in a gang are not likely to be successful in many circuits.

Another ambiguous term, “crime involving moral turpitude” (CMT), constitutes a ground of both inadmissibility⁸⁵ and deportability.⁸⁶ Circuit courts frequently address whether particular convictions should be categorized as crimes involving moral turpitude, and have reached inconsistent conclusions about the same crimes.⁸⁷ For example, several circuits agree that a conviction for receipt of stolen property is the basis for deportation for a CMT so long as an element of the crime includes knowledge that the property is stolen.⁸⁸ The Ninth Circuit, however, stands apart by requiring more than knowledge. The accused must have the intent to permanently deprive the

⁸² See INA § 101(a)(42) (codified at 8 U.S.C. § 1101(a)(42)).

⁸³ See, e.g., *Martinez v. Holder*, 740 F.3d 902, 913 (4th Cir. 2014); *Urbina-Mejia v. Holder*, 597 F.3d 360, 366–67 (6th Cir. 2010); and *Ramos v. Holder*, 589 F.3d 426, 429–30 (7th Cir. 2009).

⁸⁴ See, e.g., *Cantarero v. Holder*, 734 F.3d 82, 86 (1st Cir. 2013); *Quintanilla-Mejia v. Garland*, 3 F.4th 569, 591 (2d Cir. 2021); *Garay Reyes v. Lynch*, 842 F.3d 1125, 1138 (9th Cir. 2016); and *Gonzalez v. U.S. Att’y Gen.*, 820 F.3d 399, 405–06 (11th Cir. 2016).

⁸⁵ INA § 212(a)(2)(A)(i)(I) (codified at 8 U.S.C. § 1182(a)(2)(A)(i)(I)).

⁸⁶ INA § 237(a)(2)(A)(i)–(iii) (codified at 8 U.S.C. § 1182(a)(2)(A)(i)–(iii)).

⁸⁷ See *infra* notes 88–89 and accompanying text.

⁸⁸ See, e.g., *Michel v. INS*, 206 F.3d 253, 263 (2d Cir. 2000) (holding receipt crime was “morally turpitudinous because knowledge is a requisite element . . . and corrupt scienter is the touchstone of moral turpitude”); *De Leon-Reynoso v. Ashcroft*, 293 F.3d 633, 637 (3d Cir. 2002) (“[K]nowingly possessing stolen goods is a crime of moral turpitude.”); *United States v. Castro*, 26 F.3d 557, 558 n.1 (5th Cir. 1994) (“Convictions for . . . receiving stolen property with knowledge that such property is stolen constitute crimes of ‘moral turpitude.’”); *Hashish v. Gonzales*, 442 F.3d 572, 576 n.4 (7th Cir. 2006) (“[R]eceiving stolen property requires the same state of mind, ‘knowingly,’ . . . and has been recognized as a crime of moral turpitude.”); *Okoroha v. INS*, 715 F.2d 380, 382 (8th Cir. 1983) (deferring to the Board’s decision that possessing stolen mail was a crime involving moral turpitude “because knowledge that the article of mail had been stolen was an essential element of the offense”); *De Leon v. Lynch*, 808 F.3d 1224, 1230 (10th Cir. 2015) (“[T]he weight of apposite caselaw from the [Board] and our sister circuits supports the view that knowing the goods to be stolen, alone, is sufficient to render an offense a crime of moral turpitude.”); *Nasrallah v. U.S. Att’y Gen.*, 762 F. App’x 638, 643 (11th Cir. 2019), *rev’d on other grounds sub nom.*; *Nasrallah v. Barr*, 590 U.S. 573 (2020) (holding that “knowledge that the items were stolen” “is enough to qualify as a crime involving moral turpitude”).

owner of the property.⁸⁹ As a consequence, in the Ninth Circuit it is harder to deport an individual convicted of receipt of stolen property.

Another example arises out of the different phrasing in the statutes outlining asylum and withholding of removal, two related forms of relief. An asylum applicant must show that a protected ground such as race or religion constitutes “one central reason” for the claimed persecution.⁹⁰ This limiting and more demanding language, however, does not appear in the parallel provision regarding the related relief of withholding of removal. Several circuits have held that this higher standard also applies to withholding of removal.⁹¹ The Sixth and Ninth Circuits hold otherwise.⁹²

Differences between circuits also arise concerning enforcement procedures. The Fifth Circuit held that the due process rights of a noncitizen were not violated when he signed a form that waived any judicial review of an administrative deportation order entered after his guilty plea to an aggravated felony.⁹³ This holding is inconsistent with the due process analysis of this waiver in the Ninth Circuit.⁹⁴

3. *Reading the Tea Leaves of Loper Bright*

Until 2024, the *Chevron* doctrine generally instructed federal circuit courts to defer to reasonable agency interpretations of immigration law without conducting an independent analysis. Consequently, federal courts frequently deferred to the opinions issued by the Board of Immigration Appeals, which exercises nationwide jurisdiction over Immigration Court rulings. Nonetheless, as the previous discussion demonstrates, federal circuit courts have not always agreed with the BIA and have issued inconsistent interpretations of immigration statutes. The new approach, enunciated by *Loper Bright Enterprises*

⁸⁹ See *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1159–61 (9th Cir. 2009).

⁹⁰ INA § 208(b)(1)(B)(i) (codified at 8 U.S.C. § 1158(b)(1)(B)(i)).

⁹¹ See, e.g., *Quitizaca v. Garland*, 52 F.4th 103, 105–12 (2d Cir. 2022); *Cortez Ramirez v. Garland*, No. 19-60553 (5th Cir. 2021); *Gonzalez-Posadas v. U.S. Att’y Gen.*, 781 F.3d 677, 685 (3d Cir. 2015).

⁹² *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017). The Sixth Circuit agreed in *Guzman-Vazquez v. Barr*, 959 F.3d 253, 271–72 (6th Cir. 2020).

⁹³ See *United States v. Ortiz-Rodriguez*, No. 24-50213, consolidated with No. 24-50224 (5th Cir. 2025).

⁹⁴ See *United States v. Valdivia-Flores*, 876 F.3d 1201, 1205–06 (9th Cir. 2017), *overruled on other grounds by* *Alfred v. Garland*, 64 F.4th 1025, 1048 (9th Cir. 2023) (*en banc*).

v. Raimondo, requires federal courts to conduct their own independent analysis of statutory issues. Whenever an Immigration Court's order is appealed, the federal courts will have the final say about the statutory meaning.

Scholars⁹⁵ and practitioners⁹⁶ have speculated about the impact of *Loper Bright* on immigration cases, with some predicting that unleashing the courts from deference to the BIA may lead to more inconsistent decisions from the federal circuits. It is too soon to tell, but several recent decisions suggest that *Loper Bright* may not generate major changes in this realm. For example, the Sixth Circuit recently performed a thorough post-*Loper Bright* assessment in *Moctezuma-Reyes v. Garland*.⁹⁷ Utilizing traditional tools of statutory interpretation, the court reexamined fully the "exceptional and extremely unusual hardship" standard that must be met for cancellation of removal relief. After repudiating automatic *Chevron* deference, the Sixth Circuit independently examined the statutory language.⁹⁸ Even though it ultimately endorsed the BIA interpretation, the court provided a clear roadmap of its thinking and did not simply rubberstamp the agency.⁹⁹

⁹⁵ See, e.g., Jill Family, *Immigration Law after Chevron's Demise*, 104 ORE. L. REV. 75, 100 (2025) (arguing to incorporate more human rights concerns); and Nancy Morawetz, *Strict Construction of Deportation Statutes Post-Loper Bright*, 100 N.Y.U. L. REV. ONLINE, <https://nyulawreview.org/online-features/strict-construction-of-deportation-statutes-after-Looper-Bright/> [<https://perma.cc/W7RE-ZMFK>] (arguing to adopt the Rule of Lenity in immigration cases).

⁹⁶ See, e.g., BENJAMIN M. BARCZEWSKI, CONG. RSCH. SERV., R48320, *LOPER BRIGHT ENTERPRISES V. RAIMONDO AND THE FUTURE OF AGENCY INTERPRETATIONS OF LAW*, (Dec. 31, 2024), <https://www.congress.gov/crs-product/R48320> [<https://perma.cc/KGW5-MAME>]; *Crim-Imm Case Law Updates 2024*, NAT'L IMMIGR. PROJECT (Dec. 16, 2024), https://nipnlg.org/sites/default/files/2024-12/2024_crim-imm-case-law-updates.pdf [<https://perma.cc/GW3B-9SCA>]; Brian Green et al., *Think Immigration: Chevron Is Dead! Thoughts on the Immigration Impact of Loper Bright Enterprises*, AILA (July 22, 2024), <https://www.aila.org/think-immigration-chevron-is-dead-thoughts-on-the-immigration-impact-of-Looper-Bright-enterprises> [<https://perma.cc/V3AY-AA7A>]; *The Supreme Court's Overturning of Chevron Doctrine and Its Effect on Immigration Matters*, CLINIC (July 30, 2024), <https://www.cliniclegal.org/resources/litigation/supreme-courts-overturning-chevron-doctrine-and-its-effect-immigration-matters> [<https://perma.cc/8JJD-ZQDT>] (recognizing that the impact of *Loper Bright* might depend on the circuit); and Suchita Mathur, *Immigrants May Benefit While Others Lose Out From the Supreme Court's Decision Overruling Chevron*, AM. IMMIGR. COUNCIL (July 11, 2024), <https://www.americanimmigrationcouncil.org/blog/immigrants-may-benefit-from-supreme-court-overruling-chevron/> [<https://perma.cc/7ZCZ-UUXQ>].

⁹⁷ *Moctezuma-Reyes v. Garland*, 124 F.4th 416 (6th Cir. 2024).

⁹⁸ *Id.* at 420–23.

⁹⁹ See *id.* Thus far, when charged with interpreting immigration statutes *de novo*, some circuits simply refer to prior precedents developed in their own circuit. See, e.g., *Molina-Diaz v. Bondi*, 128 F.4th 568, 575 (4th Cir. 2025)

The Tenth Circuit provides another example of the post-*Loper Bright* judicial independent analysis in a recent cancellation of removal case. In *Rangel-Fuentes v. Bondi*,¹⁰⁰ the qualifying child was a minor at the time of the hearing, but a delay caused by the annual cap meant that the child was no longer a minor by the time relief could be granted. The court vacated a prior decision that had deferred to the BIA on the question of when a child is still a child for purposes of a cancellation of removal application and reconsidered the question without deference to the Board. The court's interpretation of "child" denied the requested relief, as had the BIA, but the court expressly rejected deference in favor of a *de novo* analysis of the terms of the statute.

The impact of *Loper Bright* will continue to unfold as the Supreme Court has remanded for reconsideration several immigration cases that were decided on the basis of *Chevron* deference.¹⁰¹ One example is *Wong v. Garland*, a Second Circuit case that had relied on the BIA's interpretation of the statutory term "conviction."¹⁰² The Court specifically instructed the Second Circuit to conduct its own analysis of the statute.¹⁰³ The jury is still out as to whether the demise of *Chevron* will lead to more searching independent analyses and a greater number of

(addressing "unable or unwilling" to control private actor standard for asylum); *Arevalo v. Bondi*, 130 F.4th 325, 326 (2d Cir. 2025); *Ponce v. U.S. Att'y Gen.*, 141 F.4th 1214, 1215–17 (11th Cir. 2025). Other courts conclude that the BIA interpretation is reasonable and persuasive. *See, e.g., Ibarra v. Bondi*, 136 F.4th 63, 66 (4th Cir. 2025) (interpretation of "good moral character" for purposes of Cancellation of Removal gave "due respect" to the BIA and ended up adopting its interpretation with scant independent analysis). *See, e.g., Lopez v. Garland*, 116 F.4th 1032, 1039–42 (9th Cir. 2024) (whether petit larceny conviction is CIMT). This decision has been criticized for its "near-dispositive 'respect'" that is "indistinguishable" from *Chevron*. Christopher J. Walker, *Some Thoughts on Skidmore Weight After Loper Bright*, YALE J. REG. (Nov. 22, 2024), <https://www.yalejreg.com/nc/some-thoughts-on-skidmore-weight-after-Loper-Bright> [<https://perma.cc/M2F6-5MKZ>].

¹⁰⁰ *Rangel-Fuentes v. Bondi*, 155 F.4th 1138, 1140 (10th Cir. 2025).

¹⁰¹ *See Bastias v. U.S. Att'y Gen.*, 42 F.4th 1266 (11th Cir. 2022), *cert. granted, judgment vacated sub nom.* *Bastias v. Garland*, 144 S. Ct. 2704 (2024) (deferring to the BIA on the definition of a crime of child abuse, child neglect, or child abandonment); *Diaz-Rodriguez v. Garland*, 55 F.4th 697 (9th Cir. 2022), *cert. granted, judgment vacated*, 144 S. Ct. 2705 (2024), *stayed sub nom.* *Diaz-Rodriguez v. Bondi*, 136 F.4th 984 (9th Cir. 2025) (*en banc*) (same question but in abeyance); *Solis-Flores v. Garland*, 82 F.4th 264, 268 (4th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2709 (2024) (deferring to the BIA on the definition of a crime involving moral turpitude).

¹⁰² INA § 101(a)(48) (codified at 8 U.S.C. § 1101(a)(48)).

¹⁰³ *Wong v. Garland*, 95 F.4th 82, 97–98 (2d Cir. 2024), *cert. granted, judgment vacated*, No. 24-92, 2024 WL 4654950 (U.S. Nov. 4, 2024).

conflicts among the appellate courts, but it is safe to say that inconsistent opinions will continue to emerge from the different circuits. These rulings will no doubt have an impact on the outcomes in different immigration venues. The selection of the Immigration Court for a removal hearing will continue to affect the choice of law that will be applied throughout the hearing and on appeal.

II

VENUE EXCEPTIONALISM IN THE ERA OF REMOTE ADJUDICATION

Immigration Court venue norms have surfaced as a concern in recent years. Burgeoning immigration caseloads have contributed to growing discontent over litigation practices that unfairly delay and disadvantage individuals caught up in immigration proceedings. Increased pre-hearing detention, coupled with increased reliance on video-teleconferenced (VTC) removal proceedings, has greatly exacerbated the situation.

In pre-video-conferencing days, government immigration agents filed most NTAs in the Immigration Court that encompassed the geographic region where the noncitizen lived or was apprehended. Venue generally coincided with the city, state or region where the individual facing removal lived and had access to legal and other resources. The hearing for detained individuals would often be conducted in facilities close to their residence. The rise of remote removal proceedings has changed this reality.

Remote proceedings were initiated as an experiment, but the COVID-19 pandemic normalized them for both detained and non-detained individuals. Remote hearings are now a routine practice in Immigration Court, and feature online appearances of the Immigration Judge, the noncitizen and his or her lawyer, the government trial attorney, or all of the above—in separate locations.

A. The Growth of Remote Hearings

1. *From Pilot Project to Standard Operating Procedure*

The video-teleconference (VTC) began as an experiment in a few immigration courts in 1995.¹⁰⁴ Although legislation authorized its use one year later, VTC was the exception rather than

¹⁰⁴ See Legal Assistance Found. of Metro. Chicago & Chicago Appleseed Fund for Just., *Videoconferencing in Removal Proceedings: A Case Study of the Chicago Immigration Court* 15, n.11 (2005) [hereinafter Chicago Report].

the rule.¹⁰⁵ Parties seeking to utilize VTC generally had to file a motion seeking authorization to proceed without the physical presence of the parties, witnesses, attorneys, and judge. Slowly but surely VTC continued to have an impact in Immigration Court. Pre-pandemic statistics reveal the steady increase in the use of VTC.¹⁰⁶

	2009	2010	2011
Total Hearings	--	--	--
VTC Hearings	106,049	110,773	>124,248
Percent VTC	--	12%	--

CHART ONE

Simultaneously with the immigration system's increasing experience with VTC, there was substantial growth in Immigration Courts dedicated to presiding over removal cases of individuals in custody.¹⁰⁷ Known as Detained Immigration Courts, these courtrooms are housed in immigration detention facilities, state and federal prisons, county jails, and even in tents.¹⁰⁸ According to an empirical study conducted by Professors Ingrid Eagly and Steven Shafer, landing in a Detained Immigration Court almost ensures a negative result. Over the past forty years, only 16% of detained individuals had access to lawyers; 93% were deported.¹⁰⁹

As the VTC tool gained a toehold in Immigration Court proceedings, it was most frequently deployed in immigration hearings involving individuals held in detention facilities.¹¹⁰ Because the Detained Immigration Courts are often in remote geographic locations, Immigration Judges and government Trial Attorneys often find it convenient to preside from their offices or homes rather than travel to the detention facilities.

¹⁰⁵ Congress added § 240(b)(2) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 240(b)(2), 110 Stat. 3009-546 (1996) (codified at 8 U.S.C. § 1229a(b)(2)).

¹⁰⁶ See Nathaniel Flanders & Amber Williams, *Memorandum on the History of Agency Video Teleconferencing Adjudications*, ADMIN. CONF. OF U.S. (Nov. 26, 2014), at 18, n.113. According to this report, "[a]s of May 2012, the EOIR did not maintain any statistics that identify the number of VTC hearings as compared to in-person hearings." *Id.* at 15. The only reason the statistics here are present is because of a FOIA request.

¹⁰⁷ See Eagly & Shafer, *supra* note 13, at 694–95.

¹⁰⁸ *Id.* at 695.

¹⁰⁹ *Id.*

¹¹⁰ While VTC use has increased everywhere, its growth has been exponentially greatest in detained cases. See Ingrid V. Eagly, *Remote Adjudication in Immigration Court*, 109 Nw. U. L. REV. 933, 947 (2015).

The same convenience rationale could also apply to counsel for the detained individuals, but immigration advocates generally object to remote appearances. Physical separation from the client could interfere so substantially with their ability to communicate with, comprehend, and support the client that remote participation would drastically compromise the attorney's duty of zealous representation.¹¹¹

2. *Legal Challenges to Remote Proceedings*

The expansion of VTC prompted critical voices almost immediately. For example, in 2004, almost seventy immigration advocacy organizations and individuals filed a public letter opposing the use of VTC.¹¹² These early critics of remote hearings raised concerns about fairness, reliability, and the environment of the proceedings.¹¹³ Specifically, they spotlighted interference with access to and effectiveness of counsel, accuracy of interpretation, delays in speech recognition, distorted credibility determinations, and technical defects and interruptions.¹¹⁴ They noted particularly grave risks when remote hearings were employed in cases involving vulnerable populations, such as

¹¹¹ See MODEL RULES OF PRO. CONDUCT r. 3.1 (AM. BAR ASS'N 2025).

¹¹² *Sign-On Letter to the Honorable Judge Creppy, Chief Immigration Judge of the Executive Office for Immigration Review, Opposing the Use of Video-Conferencing Technology in Immigration Hearings* ACLU (Mar. 26, 2004) (available at <https://www.aclu.org/documents/sign-letter-honorable-judge-creppy-chief-immigration-judge-executive-office-immigration> [<https://perma.cc/2TNE-TQHP>]).

¹¹³ See *id.*

¹¹⁴ See, e.g., Aaron Haas, *Videoconferencing in Immigration Proceeding*, 5 PIERCE L. REV. 59 (2006); Liz Bradley & Hilary Farber, *Virtually Incredible: Rethinking Deference to Demeanor When Assessing Credibility in Asylum Cases Conducted by Video Teleconference*, 36 GEO. IMMIGR. L.J. 515 (2022); *Developments in the Law — Access To Courts and Videoconferencing in Immigration Court Proceedings*, 122 HARV. L. REV. 1151, 1181–97 (2009).

children¹¹⁵ and mentally incompetent respondents.¹¹⁶ VTC hearings for these clients force lawyers to make an impossible choice: appearing in person in court while their uncomprehending client is alone on a video-conference feed or appearing on screen in detention centers with the clients while the judge is in a distant courtroom.

a. *Due Process Challenges*

The central concern raised by most critics is that remote adjudication interferes with the fairness of the removal hearing. Due process requires that individuals have a reasonable opportunity to be heard before the government takes action against them.¹¹⁷ The hearing must take place at a reasonable time and in a reasonable manner so that the individuals can develop the evidence that favors them, make arguments on their behalf, and effectively challenge the evidence and assertions made by their adversaries.

Practitioners have catalogued specific ways in which proceeding by remote video link interferes with removal hearings: impeding communication between lawyer and client, creating difficulties in introducing and using evidence, increasing misunderstandings that arise from remote interpretation, dealing with technological glitches, and intensifying the stressors on an already stressful event.

Forcing the respondents to appear on screen instead of in person distances and dehumanizes them. They are deprived of

¹¹⁵ See Amanda Robert, *Video teleconference program for immigrant children 'is contrary to the American pursuit of justice,' ABA says*, A.B.A. J. (Mar. 5, 2020), <https://www.abajournal.com/news/article/aba-president-calls-for-end-to-new-video-teleconference-program-for-unaccompanied-children> [<https://perma.cc/83YG-Y5K8>]; Beth Fertig, *Deportation Hearings By Video Present New Challenges For Migrant Children*, GOTHAMIST (Mar. 24, 2020), <https://gothamist.com/news/deportation-hearings-video-present-new-challenges-migrant-children> [<https://perma.cc/BF4F-NB6K>]; *Immigration Hearings by Video: A Threat to Children's Right to Fair Proceedings*, YOUNG CTR. FOR IMMIGRANT CHILDREN'S RIGHTS (Jan. 2020), https://static1.squarespace.com/static/597ab5f3beba0a625aaf45/t/5e4d5c0cc48abe2cc9bd102a/1582128140439/Young+Center+VTC+Report_Updated+January+2020.pdf [<https://perma.cc/D6ML-AUVS>] (recommending the discontinuation of VTC for children); and Jennifer Podkul, *Remote hearings for unaccompanied children proves a disaster*, THE HILL (Mar. 6, 2020), <https://thehill.com/opinion/immigration/487440-remote-hearings-for-unaccompanied-children-proves-a-disaster> [<https://perma.cc/VR8H-YXGD>].

¹¹⁶ See Cassandra H. Chee, *Rehabilitating Our Immigration System With The Rehabilitation Act: Rejecting Video Teleconferencing And Presumptively Requiring In-Person Court Appearances As A Reasonable Accommodation For Mentally Incompetent Detainees*, 70 AM. U. L. REV. 765 (2020).

¹¹⁷ *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

the emotional connections that accompany personal interactions. This is particularly salient in Immigration Court, where individuals are often called upon to give emotionally difficult testimony about persecution and torture. Emotions are intensified because often the potential adverse result is so drastic—banishment from the United States and a bar on the ability to return.

Furthermore, studies show that respondents in detention who are limited to remote hearings are much less engaged in the process.¹¹⁸ They are less likely to have counsel, less likely to apply for relief, and less likely to litigate the legal issues. All of these factors lead to an increased risk that remote proceedings adversely affect the outcomes.¹¹⁹

b. *Unreliable Credibility Findings*

Assessing credibility is the heart of most removal hearings, and critics of remote hearings are skeptical that Immigration Judges can make fair and reliable credibility determinations when the respondent testifies on a small screen rather than in person.¹²⁰ Body language and physical gestures may be invisible. Verbal cues are harder to discern. Interpretation may distort emotion and nuance, particularly if the technology often necessitates repetition. Nonetheless, Immigration Judges must make explicit credibility determinations; if they do not, the respondent is entitled to a presumption of credibility on appeal.¹²¹

U.S. legislation directs Immigration Judges to assess credibility based on demeanor, candor, responsiveness, and inherent plausibility.¹²² Immigration Judges' observations are key in evaluating demeanor. They should be attentive to multiple ineffable factors about the physical circumstances of the respondent:

¹¹⁸ See Ingrid V. Eagly, *Remote Adjudication in Immigration Court*, 109 Nw. U. L. REV. 933, 947 (2015); Bradley & Farber, *supra* note 114, at 544.

¹¹⁹ See Frank M. Walsh & Edward M. Walsh, *Effective Processing or Assembly-Line Justice? The Use of Teleconferencing in Asylum Removal Hearings*, 22 GEO. IMMIGR. L.J. 259, 271–72 (2008) (showing a 15% to 23% grant-rate differential between VTC and in-person hearings in FY 2005 and FY 2006).

¹²⁰ See Bradley & Farber, *supra* note 114, at 543–58.

¹²¹ See 8 U.S.C. § 1229a(c)(4)(B)–(C).

¹²² See *id.* The Supreme Court held that this presumption of credibility only applies at the BIA and not in subsequent collateral review before a federal court. See *Garland v. Ming Dai*, 593 U.S. 357, 367–68 (2021).

[T]he expression of his countenance, how he sits or stands, whether he is inordinately nervous, his coloration during critical examination, the modulation or pace of his speech and other nonverbal communication.¹²³

Assessments of candor and responsiveness are undermined by remote appearances. As remote meeting participants can attest, lack of eye contact is a major challenge. The camera on computers is almost always located on the screen separate from the image of the human being speaking, which results in misdirected visual cues. Body language is off-screen. Hesitation in speech is another frequent occurrence in remote hearings, as are requests that questions be repeated. Inaudibility, interruptions in connectivity, and sound defects are commonplace problems with remote testimony.¹²⁴

Removal hearings via VTC make it substantially more difficult to discern these potential indicia of truth-telling or falsification. This is compounded in the Immigration Court context by the potential for implicit bias and cross-cultural ignorance.¹²⁵ In light of these impediments, it is not surprising that psychological studies report that witnesses in legal settings are viewed more negatively when they testify remotely than in person.¹²⁶

3. *Judicial Rulings*

Despite these misgivings about the trustworthiness of remote hearings, legal challenges to the fairness of these proceedings have been sparse and unsuccessful.¹²⁷ Due process

¹²³ *Ling Huang v. Holder*, 744 F.3d 1149, 1153 (9th Cir. 2014).

¹²⁴ See Aruna Sury & Kate Mahoney, *Challenging an Immigration Judge's Adverse Credibility Finding with the Board of Immigration Appeals, Part Two*, IMMIGRANT LEGAL RES. CTR. (Aug. 14, 2023), <https://www.ilrc.org/resources/community/challenging-immigration-judges-adverse-credibility-finding-board-immigration-0> [https://perma.cc/ABU6-JGYX].

¹²⁵ An assessment in Canada of the psychological effects of VTC on IJ perception of testimony concluded: "This is a supremely challenging enterprise, to say the least! Multiplying the complexity of this 'business of culture' by the mediation effects created through videoconferencing introduces the significant possibility of inconsistency, inaccuracy, and altered judgement." Mark Federman, *On the Media Effects of Immigration and Refugee Board Hearings via Videoconference*, 19 J. REFUGEE STUD. 433, 450 (2008).

¹²⁶ See Zoe Given-Wilson & Amina Memon, *Seeing is believing? A systematic review of credibility perceptions of live and remote video-mediated communication in legal settings*, 36 APPLIED COGNITIVE PSYCH. 1163, 1174 (2022).

¹²⁷ In 2018, in New York City, Immigration and Customs Enforcement [ICE] curtailed in person hearings for detainees, citing safety, cost, and convenience justifications. Instead of transporting people from detention centers to the court in Manhattan, ICE instituted a VTC protocol. Detainees appeared remotely while

challenges attacking the constitutionality of remote proceedings at a systemic level have failed. Even though appellate courts occasionally assess potential due process defects on a case-by-case basis, relying on the *Mathews v. Eldridge* standards to examine whether the individual had an opportunity to be heard at a meaningful time and in a meaningful manner, none have resulted in reversal on constitutional grounds. Respondents appealing from orders of removal conducted remotely tend to argue that the remote format interfered with their access to counsel and their ability to confront evidence. Thus far, however, no federal court has reversed an Immigration Court by finding that the remote proceeding violated due process.¹²⁸ Very few have expressed misgivings at all. A rare counterexample is *Rapheal v. Mukasey*, where the Seventh Circuit rejected both a facial and an as-applied constitutional challenge to a remote hearing.¹²⁹ Nonetheless, the court ruled that the remote hearing had been unfair on the *sui generis* ground that the unavailability of a critical document at a remote location interfered with the respondent's ability to rehabilitate her credibility. Accordingly, the Seventh Circuit remanded the case to the Immigration Court.¹³⁰

their lawyers and the IJ were in the courtroom. In response, three major institutional providers of immigrant representation filed a federal class action lawsuit which challenged this blanket use of VTC, alleging a denial of due process and violations of several statutes. *P.L. v. U.S. Immigr. & Customs Enft*, No. 1:19-cv-01336 (ALC), 2021 WL 275690 (S.D.N.Y. Jan. 27, 2021). For a description of this case, see generally Cassandra H. Chee, *Rehabilitating Our Immigration System With The Rehabilitation Act: Rejecting Video Conferencing And Presumptively Requiring In-Person Court Appearances As A Reasonable Accommodation For Mentally Incompetent Detainees*, 70 AM. U. L. REV. 765 (2020). The lawsuit was dismissed for lack of subject matter jurisdiction so their claims relating to the conduct of the hearing, access to counsel and other due process violations were not adjudicated. The Court relied on 8 U.S.C. § 1252(b)(9) which restricts judicial review of final orders to circuit courts. See *P.L.*, 2021 WL 275690, at 1. Despite this outcome, the case highlighted the risks and challenges posed to effective representation in VTC proceedings.

¹²⁸ Even if a remote hearing is imperfect in some respects, to succeed on appeal a respondent must also demonstrate how the remote hearing was prejudicial. This is a high hurdle, as illustrated by the Fourth Circuit opinion in *Rusu v. U.S. Immigr. & Naturalization Serv.*, 296 F.3d 316, 324–25 (4th Cir. 2002). Reviewing a remote hearing conducted in the early years of VTC, the court identified many defects in the hearing, describing it as “haphazard” and “plagued by communication problems.” The court stopped short of finding a due process violation, stating that the VTC hearing *might* have been procedurally deficient, but concluded that petitioner did not demonstrate that the defects resulted in prejudice. Accordingly, the court denied the petition for review.

¹²⁹ *Rapheal v. Mukasey*, 533 F.3d 521 (7th Cir. 2008).

¹³⁰ See *id.* at 531–33.

4. *The Normalization of Remote Hearings*

In 2020, when the COVID-19 pandemic shut down courts and public meetings across the nation, VTC emerged as a helpful tool. The Executive Office for Immigration Review (EOIR) turned to VTC in order to re-open Immigration Courts across the country for business. The Immigration Judge could preside over the proceedings on video, with the respondent, the respondent's attorney, the trial attorney, and even the interpreter each appearing on video from different places. Exposure to the COVID-19 virus was minimized, as judges worked to resolve cases and keep up with the backlogged docket.¹³¹

After pandemic restrictions ebbed, many people working in the court system had grown used to remote Immigration Court hearings. Immigration Judges and government trial attorneys now both had access to electronic records, which made the need for in-person appearances somewhat less urgent.¹³² Moreover, many lawyers, who in the past had traveled distances to reach courtrooms in person, appreciated the convenience of a remote hearing. In the post-COVID-19 world several different variations of Immigration Court hearings evolved: (1) the Immigration Judge, all parties, interpreter, and witnesses are in the courtroom; (2) the Immigration Judge, the respondent, and the respondent's attorney are in the courtroom, but the trial attorney, the interpreter, and/or witnesses appear remotely; (3) the Immigration Judge is in the courtroom while everyone else appears remotely; (4) everyone, including the Immigration Judge, appears remotely.¹³³ On some occasions the Immigration Court hearing proceeds even though the respondent is in a different location from their representative. The diminished communication and support during the hearing (and during breaks in the hearing) interferes with access to counsel, but

¹³¹ At the end of 2021, there were 1.6 million cases pending nationally. See Giulia McDonnell Nieto del Rio, *New York Immigration Court Backlog Reaches Historic High*, TRAC IMMIGR. (Jan. 20, 2022), <https://tracreports.org/tracatwork/detail/A4803.html> [<https://perma.cc/VC34-LJ7V>].

¹³² See, e.g., EXEC. OFF. FOR IMMIGR. REV., *EOIR Courts & Appeals System (ECAS)-Online Filing*, U.S. Department of Justice (last updated Feb. 24, 2025), <https://www.justice.gov/eoir/ECAS> [<https://perma.cc/T92Z-FUSC>].

¹³³ Then EOIR Director David I. Neal identified several scenarios, noting the common denominator as involving "at least one participant appearing by video over an internet-platform." David L. Neal, Director, *Guidance to Immigration Judges on Internet Video Hearings*, DM 22-07 EXEC. OFF. FOR IMMIGR. REV. (Aug. 11, 2022), <https://web.archive.org/web/20250423040830/https://www.justice.gov/jmd/media/1237276/dl?inline> [<https://perma.cc/8RCS-XB2X>].

separate remote appearances of attorney and client continue to occur.

As the Immigration Court system emerged from the COVID shutdown in 2021, the technology of remote hearings improved. The EOIR adopted an internet-based system, Webex, that provided more reliable and clearer visual and audio features.¹³⁴ The EOIR also promulgated guidelines in 2022 for Immigration Judges concerning the procedures for requesting and granting remote hearings that required the Immigration Judge to assure all parties and witnesses are visible and audible.¹³⁵ Guidance was available for handling technology mishaps, and for those facing difficulties locating and using a computer. In addition to improving the communication systems, the EOIR promised regular training for judges.¹³⁶

Government statistics reveal the mushrooming use of remote hearing adjournments after COVID.¹³⁷ In FY 2017, prior to the COVID shutdown, 210,720 hearings, roughly 17% of all hearings, were conducted remotely either by VTC or telephone.¹³⁸ In FY 2024, the most recent year reporting complete data, there were 864,061 remote proceedings, which amounted to 33.9% of all hearings. Thus, by FY 2024, three years after re-opening from COVID, the percentage of remote hearings had doubled from FY 2017, and the total number of remote proceedings had quadrupled.

¹³⁴ As of summer 2021, EOIR reopened its courtrooms with Webex connectivity in all but three. See DEP'T OF JUST., OFF. OF INSPECTOR GEN., *Limited-Scope Inspection and Review of Video Teleconference Use for Immigration Hearings*, OIG Report No. 22-084 (June 22, 2022), <https://oig.justice.gov/sites/default/files/reports/22-084.pdf> [hereinafter OIG Report] [<https://perma.cc/JA2A-B2MR>].

¹³⁵ See Neal, DM 22-07. This DM was canceled by the Acting Director of EOIR by PM 25-25, March 14, 2025. Sirce Owen, Acting Dir., *Cancellation of Director's Memorandum 22-07*, PM 25-25 EXEC. OFF. FOR IMMIGR. REV. (Mar. 14, 2025).

¹³⁶ See *id.* at 3 n.1.

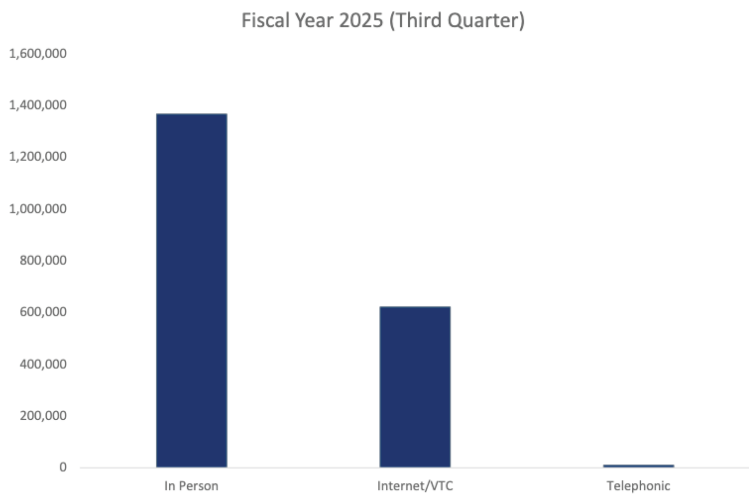
¹³⁷ See EXEC. OFF. FOR IMMIGR. REV., *EOIR to Resume Hearings in Non-Detained Cases at Certain Immigration Courts*, U.S. DEPARTMENT OF JUSTICE (May 17, 2021), <https://www.justice.gov/eoir/page/file/1394466/dl?inline> [<https://perma.cc/T58D-ABST>].

¹³⁸ See EXEC. OFF. FOR IMMIGR. REV., *Adjudication Statistics, Hearing Adjournments by Medium and Fiscal Year FY 2025 Third Quarter*, U.S. DEPARTMENT OF JUSTICE (July 31, 2025), <https://www.justice.gov/eoir/media/1344966/dl?inline> [<https://perma.cc/2J8Q-BJNR>]. Earlier government statistics reported four types of remote hearings: televideo (VTC), internet-alternate location, internet-court, and telephonic. Now, they have been consolidated into two categories as in the chart below. See EXEC. OFF. FOR IMMIGR. REV., *Adjudication Statistics, Hearing Adjournments by Medium and Fiscal Year FY 2023 Third Quarter*, U.S. DEPARTMENT OF JUSTICE (July 13, 2023), <https://www.justice.gov/eoir/page/file/1508566/dl?inline> [<https://perma.cc/DV5N-ESFN>].

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

ADJUDICATION STATISTICS

Hearing Adjournments¹ by Medium and Fiscal Year



FY	In Person	Internet/VTC	Telephonic	Total Hearing Adjournments ²
2017	1,035,688	198,501	12,236	1,246,425
2018	1,099,850	210,511	12,928	1,323,289
2019	1,544,520	252,297	11,318	1,808,135
2020	988,347	281,345	12,008	1,281,700
2021	214,917	157,404	25,740	398,061
2022	602,863	658,924	44,884	1,306,671
2023	1,166,668	793,158	35,471	1,995,297
2024	1,688,792	837,314	28,044	2,554,150
2025 (Third Quarter)	1,365,669	621,285	10,275	1,997,229

Data Generated: July 31, 2025

¹ Includes all hearing types. Excludes adjournment codes 59 (COURT CLOSURE), 74 (PUBLIC HEALTH), and 99 (DATA ENTRY ERROR).

² Excludes adjournments where the hearing medium “No Hearing” was selected.

CHART TWO¹³⁹

¹³⁹ See *Adjudication Statistics FY 2025 Third Quarter*, *supra* note 138. The Migration Policy Institute also collected data via a FOIA request that showed a more than 400,000 increase of remote hearings between 2017 and nine months of 2023. See Muzaffar Chishti & Julia Gelatt, *Antiquated U.S. Immigration System Ambles into the Digital World*, MIGRATION POL’Y INST. (Nov. 29, 2023), <https://www.migrationpolicy.org/article/us-immigration-backlog-digital-world> [<https://perma.cc/86RU-9VEF>].

B. The New Status Quo

Even before the pandemic, the handwriting was on the wall. The convenience, flexibility, efficiency, and economy of remote hearings are a boon to court administration. In 2004, EOIR established Headquarters Immigration Court for the express purpose of handling video proceedings. The Director of the new unit then asserted confidently:

[VTC] does not change the adjudicative quality or decisional outcomes. Hearings conducted by [video] are fair and fully protect the participants' right to procedural due process. There is a means of transmitting and receiving additional evidence between all locations and all participants. The audio/video transmission is secure, and the participants' privacy is protected.¹⁴⁰

Subsequent EOIR policy statements regularly endorsed and solidified the use of VTC.¹⁴¹ By 2009, EOIR stated that the use of VTC benefited both the government and the respondents.

For the immigration courts, VTC saves travel time for immigration judges allowing them greater time to hear more cases. It also promotes effective case management by allowing immigration judges to conduct hearings on an ad hoc basis for their counterparts in other immigration courts and thereby assisting with unusually heavy caseloads.¹⁴²

In the government's view, remote hearings increase capacity and convenience, lower travel costs, consolidate and manage dockets, assure timely adjudication, and reduce instances

¹⁴⁰ EXEC. OFF. FOR IMMIGR. REV., *Fact Sheet: EOIR Headquarters Immigration Court*, U.S. DEPARTMENT OF JUSTICE (July 21, 2004), <https://www.justice.gov/sites/default/files/eoir/legacy/2004/08/27/HQICFactSheet.pdf> [<https://perma.cc/WQ5Y-FNLR>].

¹⁴¹ "More than one-half of the immigration courts in the United States are equipped with the technology to conduct video conferences." *Jurisdiction and Venue In Removal Proceedings*, 72 FED. REG. 14,494 (Mar. 28, 2007). In 2011, the Administrative Conference of the United States [ACUS] prepared a lengthy report about the use of video hearings by different federal agencies, including the EOIR. The report provides a history and a qualitative assessment of how VTC works in immigration courts. It commends VTC use in high-volume courts. But with reservations about how it is implemented to assure fair procedures. Committee on Adjudication, *Agency Use of Video Hearings: Best Practices and Possibilities for Expansion, Proposed Recommendation*, ADMIN. CONF. OF U.S. (June 16–17, 2011), <https://www.acus.gov/sites/default/files/documents/Proposed-Recommendation-Video-Hearings-5-18-2011.pdf> [<https://perma.cc/ND8N-YK6X>].

¹⁴² EXEC. OFF. FOR IMMIGR. REV., *Fact Sheet: EOIR's Video Teleconferencing Initiative* (Mar. 13, 2009), <https://www.justice.gov/eoir/videoconferencingfactsheet-march2009> [<https://perma.cc/84BA-8FSQ>].

of unused courtrooms. The *only* benefit to the respondent identified in this Fact Sheet is that VTC “*can* provide for a more expedient hearing.”¹⁴³ By 2020, these positive attributes reduced to the simple justification: “operational need.”¹⁴⁴

Although some Immigration Judges initially voiced reservations about remote proceedings, expressing concerns about the inherent impediments to communication, interpretation, and effective lawyering,¹⁴⁵ as the technology supporting remote proceedings became more dependable, more Immigration Judges supported the new tool.¹⁴⁶ Currently, most judges endorse remote hearings, even urging expansion to all-remote settings. They characterize remote hearings as a “force multiplier” to reduce the case backlog without compromising the quality of adjudication.¹⁴⁷ Remote hearings even began to find enthusiasts in the immigration bar as lawyers came to trust this improved technology and adjusted to its limitations. Its convenience started to outweigh its potential disadvantages.¹⁴⁸

Remote proceedings are the new normal in Immigration Court. In 2025, the Trump administration rescinded the 2022 Director’s Memorandum that had set forth a flexible approach to scheduling remote hearings, including a grace period if technical problems arise. The 2025 rescission statement claimed, without explanation or factual basis, that the 2022 Director’s Memorandum was redundant and undermined judicial independence. It also gratuitously dismissed most criticisms of remote hearings by advocates as partisan.¹⁴⁹

It is doubtful that the Trump administration will reduce the use of remote hearings. Indeed, EOIR is on track to conduct the same volume of remote hearings in FY 2025 as in the

¹⁴³ *Id.* (emphasis added).

¹⁴⁴ James McHenry III, Director, *Immigration Court Hearings Conducted by Telephone and Video Teleconferencing*, PM 21-03 (Nov. 6, 2020), <https://www.justice.gov/eoir/reference-materials/OOD2103/dl> [<https://perma.cc/CP4F-3WBG>].

¹⁴⁵ See OIG Report, *supra* note 134, at 32.

¹⁴⁶ Some IJs continued to voice reservations about VTC. Others called for improved transcription tools and simultaneous translation. See *id.*

¹⁴⁷ See, e.g., Mimi Tsankov, *Inside Immigration Court: The Pros, Cons of Remote Hearings*, LAW 360 (June 2, 2023), <https://www.law360.com/articles/1509443/inside-immigration-court-the-pros-cons-of-remote-hearings> [<https://perma.cc/RTP5-B37F>].

¹⁴⁸ See *id.*

¹⁴⁹ See Sirce Owen, *Cancellation of Director’s Memorandum 22-07*, PM 25-25, at 1 n.1 (Mar. 14, 2025). In footnote 1, the memo describes criticisms of VTC as “tendentious, or partisan, public arguments on the use of VC, made by those hoping to pressure EOIR adjudicators into resolving cases a particular way regardless of the facts, evidence or law.”

prior year.¹⁵⁰ Yet, the 2025 rescission statement bodes ill for the common sense and flexible practices recently established. Recognizing that remote hearings—at least in some forms—are here to stay, the challenge is to deploy them consistently with traditional notions of fairness, convenience for the defendant, and the administration of justice.¹⁵¹ Those goals require a new vision of venue that recalibrates the balance of power currently exclusively in the hands of the government.

C. Remote Adjudication and Ascertaining the Circuit for Appellate Review

The increase in fully or partially remote hearings involving widely dispersed parties and courts has led to increased litigation about which of the seventy-one Immigration Courts should exercise venue for the removal hearing. Remote adjudication has also raised questions about the proper geographical location of the appeal. Which of the twelve federal circuit courts is appropriate when documents are filed in one location,¹⁵² the hearing is conducted with the judge and the parties in different locations, and the detainee is transferred to a facility in another circuit while the case is pending? During the early years of remote hearings, regulations were proposed but not adopted, leaving the venue question in limbo.¹⁵³ The complexities

¹⁵⁰ See *Adjudication Statistics FY 2025 Third Quarter*, *supra* note 138. EOIR has simplified some of the categories of remote hearings that it reports. In the first half of FY 2025, remote hearings amounted to 30.6% of all hearings.

¹⁵¹ See Jacqueline Thompson, *Virtual Court Hearings Are Here to Stay Post-Pandemic*, *Survey Finds*, Law.com (Aug. 18, 2021), <https://www.law.com/nationallawjournal/2021/08/18/virtual-court-hearings-are-here-to-stay-post-pandemic-survey-finds> [<https://perma.cc/RTP5-B37F>].

¹⁵² The bureaucracy of EOIR introduced yet another factor, the Administrative Control Courts, directing them to maintain records of proceedings for Immigration Courts within a specified geographical region. An administrative control Immigration Court is one that creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area. All documents and correspondence pertaining to a Record of Proceeding shall be filed with the Immigration Court having administrative control over that Record of Proceeding and shall not be filed with any other Immigration Court. A list of the administrative control Immigration Courts with their assigned geographical areas will be made available to the public at any Immigration Court. See 8 C.F.R. § 1003.11.

¹⁵³ In 2007, the EOIR proposed an amended regulation to 8 C.F.R. § 1003.20 to address these venue matters. *Jurisdiction and Venue in Removal Proceedings*, 72 Fed. Reg. 14,494 (proposed Mar. 29, 2007). The regulation instantiated the government's perspective. In a nutshell, the proposed regulation specified that venue would remain at the place of hearing identified by the Department of Homeland Security on the charging document, no matter whether the Immigration Judge, respondent, or legal representatives appear remotely from other locations.

involved in remote proceedings also have led to disagreements about the appropriate court for federal appellate review.

1. *Locating Judicial Review for Remote Hearings: Circuit Court Disagreement*

Congress provided that an order of removal from the United States by an Immigration Court and affirmed by the Board of Immigration Appeals can receive judicial review in only one place:

The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.¹⁵⁴

When proceedings were all in person, the geography was clear: the Immigration Court where the Immigration Judge presided and all the parties and witnesses appeared was the location that mattered for selecting the federal appellate court for judicial review. With the advent of partially or fully remote hearings, it was less clear precisely where the immigration judge had completed the proceedings.¹⁵⁵

Some federal courts, notably the Fourth and the Tenth Circuits, focused on the location of the Immigration Judge, emphasizing the portion of the statute that specifies that the “immigration judge’s” actions are significant.¹⁵⁶ Other courts emphasized the statutory reference to “the proceedings,” and concluded that the proceedings should be linked to the Immigration Court that initially had venue in the case. Other courts

For purposes of judicial review, the Immigration Judge would be deemed to complete the proceedings at the location designated on the notice for the final hearing, no matter whether the judge or any other participant was in that location. Venue could be changed from the Immigration Court specified in the NTA in two circumstances: the Immigration Judge grants a motion for change of venue, or the Office of the Chief Immigration Judge grants an administrative transfer of the proceedings.

This proposed regulation, while never adopted, exemplifies the government’s interest in capturing where, when and how remote hearings are conducted, establishing tight control over venue.

¹⁵⁴ INA § 242(b)(2) (codified at 8 U.S.C. § 1252(b)(2)).

¹⁵⁵ For a comprehensive practice advisory, see Victoria Nielson, *Video Hearings in Immigration Court: “Knotty” Issues of Venue and Choice of Law*, THE NAT’L IMMIG. PROJECT OF THE NAT’L LAWYERS GUILD (Dec. 21, 2022), https://niplng.org/sites/default/files/2023-02/2022_21Dec-virtual-hearings-choice-law-advisory.pdf [<https://perma.cc/TY78-FAZ4>]. This practice advisory was drafted before the decision in *Matter of Garcia*, *infra* note 167.

¹⁵⁶ See, e.g., *Herrera-Alcala v. Garland*, 39 F.4th 233, 241 (4th Cir. 2022); *Yang You Lee v. Lynch*, 791 F.3d 1261, 1264–66 (10th Cir. 2015).

took a “totality of the circumstances” approach that did not give dispositive weight either to the location of the Immigration Judge or to the Immigration Court in which the NTA had originally been filed.

A review of the different approaches illuminates the complexities that often accompany remote adjudication. In *Herrera-Alcala v. Garland*,¹⁵⁷ the Fourth Circuit reviewed an order of removal entered against an individual detained in Louisiana (Fifth Circuit) by an Immigration Judge located in the Immigration Adjudication Center in Virginia (Fourth Circuit). The NTA had been filed in Louisiana Immigration Court (Fifth Circuit), which is where Herrera-Alcala was located during his remote appearances. The Fourth Circuit noted that prior to 1996, the statute had provided two options for filing a petition for review: either where the petitioner resided or where the administrative proceedings were conducted.¹⁵⁸ The 1996 amendment permitted only one location for filing the petition for review and tied the sole remaining option to the immigration judge’s action. Accordingly, the Fourth Circuit concluded that the physical location of the Immigration Judge was dispositive, rather than the location of the respondent, the trial attorney, or the NTA.¹⁵⁹ The court ruled that *Herrera-Alcala* had properly filed his petition for review in the Fourth Circuit.

The First,¹⁶⁰ Second,¹⁶¹ and Seventh¹⁶² Circuits have taken a different approach to situating where “the proceedings” were completed for purposes of seeking judicial review. For example, in *Sarr v. Garland*, the NTA was filed in Louisiana Immigration Court (Fifth Circuit) where the respondent was detained and where he attended all four of his immigration hearings remotely. The Immigration Judge presided from Buffalo,

¹⁵⁷ *Herrera-Alcala*, 39 F.4th 233.

¹⁵⁸ *See id.* at 242. Prior to the enactment of 8 U.S.C. § 1252(b)(2), the statute currently authorizing judicial review of orders of removal, legislation allowed two options for filing petitions for review: “[T]he venue of any petition for review . . . shall be in the judicial circuit in which the administrative proceedings before a special inquiry officer were conducted in whole or in part, or in the judicial circuit wherein is the residence, as defined in this chapter, of the petitioner, but not in more than one circuit.” 8 U.S.C. § 1105a(a)(2) (1994).

¹⁵⁹ The Tenth Circuit, generally understood to be aligned with the Fourth, adopted a more circumstantial approach. *See, e.g., Yang You Lee*, 791 F.3d at 1264–66; *Medina-Rosales v. Holder*, 778 F.3d 1140 (10th Cir. 2015).

¹⁶⁰ *Georcely v. Ashcroft*, 375 F.3d 45, 49 (1st Cir. 2004).

¹⁶¹ *Sarr v. Garland*, 50 F.4th 326 (2d Cir. 2022).

¹⁶² *Ramos v. Ashcroft*, 371 F.3d 948 (7th Cir. 2004); *Chavez-Vasquez v. Mukasey*, 548 F.3d 1115, 1118 n.1 (7th Cir. 2008).

New York Immigration Court (Second Circuit), where the respondent's attorney was present. The judge denominated the opinion as one from the Buffalo Immigration Court. In addition, the case was assigned to an Administrative Control Court located in Batavia, New York (Second Circuit).

After his removal order was affirmed by the BIA, the respondent filed his petition for review in the Second Circuit. The Second Circuit emphasized that the government had filed the NTA in the Immigration Court in Louisiana, thus creating venue in Louisiana for Sarr's removal proceedings. Neither Sarr nor the government had filed a motion to change venue, so the Louisiana Immigration Court continued to have venue. Moreover, Sarr had remained in detention in Louisiana and had attended hearings remotely from Louisiana. The Second Circuit concluded that Sarr's removal proceedings had been completed in Louisiana. Despite the multiple connections with New York, the venue created by the filing of the NTA in Louisiana remained the location of the proceedings when the Immigration Judge completed them.¹⁶³ Accordingly, Sarr should have filed his petition for review in the Fifth Circuit.

The Third Circuit wrestled with the same statutory terms in *Castillo v. A.G.*, a case involving a consequential choice of law question.¹⁶⁴ Castillo was detained in Pennsylvania in the Third Circuit, where the controlling law was favorable to him.¹⁶⁵ The NTA had been filed in the Cleveland Immigration Court (Sixth Circuit). A remote hearing was held, presided over by an Immigration Judge sitting in Richmond, Virginia (Fourth Circuit). After losing in Immigration Court and the BIA, Castillo filed his petition for review in the Third Circuit, his physical location during his remote hearing. The government disagreed, arguing that the petition should be filed in the Sixth Circuit, where the law applicable to his case was unclear.

The Third Circuit analysis focused on the word "proceedings." The court looked neither to the location of the Immigration Judge, the location of the respondent, nor the location of the final hearing. In the Third Circuit's view, the concept "proceedings" encompasses the totality of the case. Unless there is a formal change of venue, "the proceedings are conducted and 'completed' . . . where they began."¹⁶⁶ Accordingly, the court

¹⁶³ *Sarr*, 50 F.4th at 329.

¹⁶⁴ *Castillo v. U.S. Att'y Gen.*, 109 F.4th 127 (3d Cir. 2024).

¹⁶⁵ *Id.* at 130, n.3.

¹⁶⁶ *Id.* at 133.

held that the petition for review should have been filed in the Sixth Circuit.

Thus, the federal appellate circuits disagree about the analysis to be employed in determining the appropriate federal circuit for judicial review of orders of removal. Of the circuits that have addressed the issue, the majority appear to conclude that the physical location of the Immigration Judge in remote hearings is not critical. The appropriate circuit for judicial review tends to be the one where the NTA was originally filed, unless a formal motion for change of venue was filed and granted. Consequently, filing the NTA not only selects the venue where the Immigration Court will proceed, but also generally determines the circuit where the appeal will be filed, and accordingly the circuit law that will apply throughout the proceedings.¹⁶⁷

2. *Ascertaining the Relevant Circuit Precedent in Remote Hearings: The Board of Immigration Appeals*

The proliferation of remote hearings has challenged the Board of Immigration Appeals, which must follow the precedent of the circuit with jurisdiction over the Immigration Court whose decision is under review.¹⁶⁸ The BIA issued two precedent decisions on this topic in quick succession in 2023. The first, *Matter of Garcia*,¹⁶⁹ involved an application for cancellation of removal, which requires a showing of “exceptional and extremely unusual hardship.”¹⁷⁰ The government filed the NTA in the Philadelphia Immigration Court (Third Circuit) where Garcia appeared in person. The government successfully moved for a change of venue to York Immigration Court, also within the Third Circuit. Garcia appeared in person several times in York, filed documents in York, and attended his individual hearing in person in York Immigration Court. The judge who presided remotely over the York hearing was physically located

¹⁶⁷ See, e.g., *Georcely v. Ashcroft*, 375 F.3d 45, 49 (1st Cir. 2004) (no specific holding on PFR issue, but noted that where NTA filed and location of ACC are persuasive); *Lizing v. Att’y Gen.*, 937 F.3d 244 (3d Cir. 2019) (no formal rule articulated but suggests that 3d Cir. is proper because no party objected to PFR); *Adeeko v. Garland*, 3 F.4th 741, 746 (5th Cir. 2021) (PFR proper in 5th Cir. because proceedings were completed there); *Adongafac v. Garland*, 53 F.4th 1114 (8th Cir. 2022) (PFR proper where administrative proceedings are completed); *Plancarte Saucedo v. Garland*, 23 F.4th 824, 832 (9th Cir. 2022) (venue formally transferred so proper to file PFR from new Immigration Court venue).

¹⁶⁸ See *Abdulai v. Ashcroft*, 239 F.3d 542, 553 (3d Cir. 2001).

¹⁶⁹ *Matter of Garcia*, 28 I. & N. Dec. 693 (B.I.A. 2023).

¹⁷⁰ INA § 240A(b)(1) (codified at 8 U.S.C. § 1229b(b)(1)).

in the Falls Church, Virginia Immigration Adjudication Center (Fourth Circuit).

The BIA applied Third Circuit precedent to Garcia's appeal. In concluding that the physical location of the Immigration Judge was irrelevant, the BIA noted that advances in technology allow Immigration Judges to substitute for others at the last minute, but that it would cause unfairness and wreak havoc if the physical location of the judge suddenly caused the applicable law to change.¹⁷¹ The BIA emphasized that *Garcia* had been physically within the Third Circuit during the proceedings and that both the NTA and the subsequent formal change of venue had indicated that Garcia's proceedings were moving forward at Immigration Courts within the Third Circuit. As a result, applying Third Circuit precedent comported with the notice that Garcia had received about his case. The BIA also emphasized that "tying the choice of law to venue offers the benefit of predictability."¹⁷² Consequently, the BIA concluded that it should apply Third Circuit interpretations of law to the "exceptional and extremely unusual hardship" standard.

In early 2024 the BIA decided *Matter of M-N-I*,¹⁷³ a case with connections to three separate federal circuits. The government filed the NTA in the Cleveland, Ohio Immigration Court (Sixth Circuit) and at first designated the Cleveland Immigration Court as the Administrative Control Court (ACC), where the record of proceedings was filed. Prior to the hearing, the government reassigned the record of proceedings to the Elizabeth, New Jersey Administrative Control Court (Third Circuit). An immigration judge presiding from the Richmond, Virginia Immigration Adjudication Center (Fourth Circuit) conducted the hearing remotely, and the respondent participated from the detention facility in Pennsylvania (Third Circuit). The Immigration Judge applied Third Circuit law and denied relief.¹⁷⁴

¹⁷¹ See *Garcia*, 28 I. & N. Dec. at 707. While this conclusion seems straightforward, some commentators note that "important issues [are] unaddressed" particularly since ICE has exclusive control over where a NTA is filed. See, e.g., *Law 360: Immigration Board Must Mend Choice of Law Post-Garcia*, AMICA CTR. FOR IMMIGRANT RIGHTS (June 7, 2023), <https://amicacenter.org/news/law360-immigration-board-must-mend-choice-of-law-post-garcia/> [<https://perma.cc/N9S7-ADVB>].

¹⁷² *Garcia*, *supra* note 169, at 697, 702–03; see also *M-N-I*, 28 I. & N. Dec. at 806.

¹⁷³ *Matter of M-N-I*, 28 I. & N. Dec. 803, 806–07 (B.I.A. 2024).

¹⁷⁴ See *id.* at 804. The respondent argued that the Immigration judge should apply Sixth Circuit law. The BIA ruled that the transfer of the ROP from the Cleveland Administrative Control Court to the Elizabeth, New Jersey Administrative Control Court did not affect the venue of the case.

On appeal to the BIA, the respondent argued that the Immigration Judge should have evaluated his claim under Sixth Circuit precedents. The BIA agreed. It ruled that the NTA “unambiguously” located the proceedings in the Cleveland Immigration Court, and there had never been a formal change of venue. As a result, despite the multiple connections with Pennsylvania and New Jersey, the BIA concluded that the Immigration Court proceedings had taken place in Cleveland. Consequently, the BIA directed the Immigration Court to apply the Sixth Circuit precedents.¹⁷⁵

Under these BIA decisions, as well as those of the majority of the federal courts of appeals, the government’s choice of venue has become even more consequential. The geographic location where the government files the NTA determines the Immigration Court venue regardless of any detainee transfers or changes in the Administrative Control Court.¹⁷⁶ And the Immigration Court venue will in most instances determine the law that will apply.

The Khalil proceedings and other high-profile cases demonstrate the unfettered power of the Department of Homeland Security to determine the “place” of the hearing. It can choose to file the NTA in a geographic location that has no connection to the underlying charges and that isolates the defending parties from their legal resources and their community. Moreover, the Department can select those federal appellate circuits that have more immigrant-unfriendly precedents relating to grounds of deportation, availability of certain immigration benefits, and eligibility for humanitarian relief. It is noteworthy that for the extraordinary and controversial proceedings against Khalil, DHS selected the Fifth Circuit, well known for its anti-immigrant case law.¹⁷⁷

¹⁷⁵ See *id.* at 807–08. See also *BIA Restates That Choice of Law is Based on Venue, Which Only Parties Can Move to Change*, CATH. LEGAL IMMIGR. NETWORK (June 26, 2024), <https://www.cliniclegal.org/resources/removal-proceedings/bia-restates-choice-law-based-venue-which-only-parties-can-move> [https://perma.cc/FWB7-E36K].

¹⁷⁶ Post-*Garcia* decisions follow that precedent. See, e.g., *Bazile v. Garland*, 76 F.4th 5, 14–15 (1st Cir. 2023); *Castillo v. U.S. Att’y Gen.*, 109 F.4th 127, 133 (3d Cir. 2024).

¹⁷⁷ “Immigration courts in the 5th Circuit have the lowest rates for asylum and the 5th Circuit Court has the lowest rate for remanding immigration case appeals for a possibility of a positive outcome during a retrial, resulting in the legal violence of not having a realistic option to appeal one’s case.” Alisa Hartsell & Sarah A. Blue, *supra* note 77, at 9; see also Jeevna Sheth & Devon Ombres, *The 5th Circuit Court of Appeals is Spearheading a Judicial Power Grab*, CTR. FOR AM. PROGRESS (May 15, 2024), <https://www.americanprogress.org/>

III

CHANGE OF VENUE AS REMEDY FOR EXCEPTIONALISM

Motions to change venue have long provided an avenue to ameliorate unfairness or inefficiency that results from the initial geographical location of the lawsuit. This is true in general federal litigation, in both criminal and civil matters. Motions to change venue are also available in Immigration Court. Surveying the case law concerning motions to change venue in federal practice provides a useful context for considering the remedy that motions to change venue might offer in the context of deportation hearings.

A. Federal Courts and Change of Venue in Nonimmigration Cases

Congress has codified factors relevant to change of venue motions in both criminal and civil litigation. It is instructive to summarize the significant elements set forth in statutes and rules, as common sense suggests that factors well known to courts in general litigation should inform “good cause” for changing venue for immigration proceedings.

1. *Codification*

Congress has enacted legislation and rules in both civil and criminal federal cases authorizing courts to change venue in certain instances. In criminal cases, the Federal Rules of Criminal Procedure provide that defendants may request a change of venue.¹⁷⁸

article/the-5th-circuit-court-of-appeals-is-spearheading-a-judicial-power-grab/ [https://perma.cc/DW3Z-ABMN]. The anti-immigrant bias of the Fifth Circuit was on display in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) in which the court resoundingly espoused the extreme minority position advanced by the government on the question of the government’s statutory authority to indefinitely detain noncitizens present in the United States. By many accounts, the government, which had not prevailed on this issue in most district courts around the country, chose to appeal in the Fifth Circuit in order to take advantage of its well-known ideological bent. See, e.g., Kyle Cheney, *A Fourth Appeals Court Rejects ICE Mass Detention Policy*, POLITICO (June 30, 2026), <https://www.politico.com/news/2026/06/30/mandatory-detention-10-circuit-ruling-00983227> [https://perma.cc/6E4L-UQV5] (noting that more than 460 federal trial judges and four appellate courts had rejected this interpretation and only fifty-four trial judges and two appellate courts had adopted it).

¹⁷⁸ The Federal Rules of Criminal Procedure were adopted by order of the Supreme Court after the Attorney General transmitted them to Congress. Congress provided the Supreme Court the power to prescribe rules in the Act of June 29, 1940, ch. 445 (18 U.S.C. § 687).

(a) For Prejudice. Upon the defendant's motion, the court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.

(b) For Convenience. Upon the defendant's motion, the court may transfer the proceeding, or one or more counts, against that defendant to another district for the convenience of the parties, any victim, and the witnesses, and in the interest of justice.¹⁷⁹

Note that the motion can only be made by the defendant. The prosecutor, who—subject to constitutional constraints to file in a district where the crime or a portion of the crime was committed—filed the case initially, cannot seek to change venue. The defendant is limited to two grounds to support a motion to seek a different geographical location. The first is to avoid prejudice to the defendant that would impede a fair and impartial trial. The second is to change the location in order to make the trial more convenient to the defendant, victims, or witnesses. Transferring the proceeding in the interests of justice also falls within this ground.

Turning to civil litigation, Congress has recognized the need to change venue in certain circumstances and has codified the factors that should be considered. Two statutes are significant. The main legislation governing change of venue in civil cases, 28 U.S.C. § 1404, addresses situations in which litigants seek to transfer a case from one proper venue to another. The related statute, 28 U.S.C. § 1406, furnishes a remedy when litigation has been filed in an improper venue.¹⁸⁰ In the latter scenario the court can either dismiss the case or transfer it to a proper venue.

The principal change of venue provision states:

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.¹⁸¹

¹⁷⁹ FED. R. CRIM. P. 21.

¹⁸⁰ 28 U.S.C. § 1406(a) provides: "The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."

¹⁸¹ 28 U.S.C. § 1404(a). Note that the text of § 1404(a) indicates that transfers from one court with proper venue to another with proper venue should take into

This statute recognizes that a single dispute may be connected to several different geographical locations. For example, the plaintiff who initiates litigation generally can select either the district where the defendant resides or a district (and there may be several) with which the underlying dispute is linked. The plaintiff may select a site for litigation that is legally permissible but is less than ideal. Congress enacted the change of venue statute in order to provide a tool for moving litigation from a burdensome or unfair trial location. Congress limited the transfer of cases in several ways. First, the transfer must be to another judicial district that complies with the venue limitations ("where it might have been brought"). This constrains transfer to districts where the defendant resides, or where a substantial part of the dispute occurred. Alternatively, if all the parties consent, the litigation may move to a geographical location that does not satisfy the venue laws.

In both alternatives, Congress has directed federal courts to assess the convenience to the litigants and to those participating in the litigation as the courts evaluate requests to change venue. Furthermore, similar to the approach in federal criminal cases, the courts must be guided by concerns for justice.

2. *Judicial Decisions*

The basic provision regulating change of venue in civil litigation, 28 U.S.C. § 1404(a), by its own terms highlights "the convenience of parties and witnesses" and "the interest of justice." Not surprisingly, many judicial opinions have paid particular attention to the importance of assessing convenience. Predictably, the decisions tend to be closely tied to the specific facts of the case. Some courts have attempted to compile checklists of circumstances to keep in mind. A recent opinion, for example, noted that the convenience analysis should include factors such as the "location of relevant documents, ease of access to sources of proof, locus of operative facts, availability of process, relative means of parties, and [the] forum's familiarity with governing law."¹⁸²

account the convenience of parties and witnesses as well as the interest of justice. The text of § 1406(a) indicates that only the interest of justice should be considered when the court considers whether to transfer a case from an improper venue to a proper venue.

¹⁸² Albright v. Terraform Labs, Pte. Ltd., 641 F. Supp. 3d 48, 55 (S.D.N.Y. 2022).

Courts have taken a pragmatic approach, looking beyond formalities and appraising the physical and financial condition of the parties.¹⁸³ For example, in *Everlast World's Boxing Headquarters v. Ringside, Inc.*, the federal court in New York concluded that the defendants would be “substantially inconvenienced—practically and financially—by having to defend this suit in New York.”¹⁸⁴ Emphasizing that a large number of witnesses lived in Kansas and that the small start-up companies would suffer substantial financial hardship from litigating in New York, the court granted the motion to change venue to Kansas.

Courts have also ruled that the change of venue analysis should take into account the contact or lack of contact that parties have with the various venue possibilities. As another example, a court granted a motion to change venue from New York to Florida when nine of the twelve trial witnesses resided in Florida and none lived in New York.¹⁸⁵ Courts also frequently weigh the location of documents to be used or produced by parties before trial, the ability to compel the attendance of unwilling witnesses, and the residence of the parties.¹⁸⁶ If the underlying conduct did not occur in the venue selected by the plaintiff, courts are more likely to transfer the case.¹⁸⁷

When courts consider “the interest of justice” in changing venue, they focus on “our system’s preference for having local controversies decided locally.”¹⁸⁸ The community where the conduct occurred and the defendant resided will have more of a stake in following the litigation and learning of its outcome

¹⁸³ See *Samsung SDI Co., Ltd. v. Matsushita Elec. Indus. Co.*, 524 F. Supp. 2d 628 (W.D. Pa. 2006).

¹⁸⁴ *Everlast World's Boxing Headquarters Corp. v. Ringside, Inc.*, 928 F. Supp. 2d 735, 744–45 (S.D.N.Y. 2013).

¹⁸⁵ See *Guardian Life Ins. Co. of Am. v. Coe*, 724 F. Supp. 3d 206, 215 (S.D.N.Y. 2024).

¹⁸⁶ See, e.g., *S.M.R. Innovations Ltd. v. Apple Inc.*, 756 F. Supp. 3d 453, 463 (W.D. Tex. 2024) (documents and data centers in California, not Texas); *Everlast World's Boxing*, 928 F. Supp. 2d at 745 (two defendants have documents in Kansas); see generally *DeLay & Daniels, Inc. v. Allen M. Campbell Co., Gen. Contractors, Inc.*, 71 F.R.D. 368 (D.S.C. 1976).

¹⁸⁷ See, e.g., *Kreinberg v. Dow Chemical Co.*, 496 F. Supp. 2d 329, 330 (S.D.N.Y. 2007) (operative facts took place in Michigan); *Seaman v. IAC/InterActiveCorp, Inc.*, No. 3:18-cv-401, 2019 WL 1474392, at *3 (E.D. Va. 2019) (suit by DC resident against a NY business for conduct in New York should be transferred from Virginia to NY); *U.S. ex rel. VIB Partners v. LHC Group, Inc.*, No. CV RDB-21-2232, 2022 WL 1657522, at *3 (D. Md. Nov. 1, 2022) (suit seeking recovery for claimed Medicare fraud transferred from Maryland, where no parties reside and no underlying conduct occurred, to Tennessee).

¹⁸⁸ See *Bell v. CSX Transp., Inc.*, 758 F. Supp. 3d 390, 395 (D. Md. 2024).

than residents of a distant state. Courts compare the relationship of the controversy to the initial venue and to the requested venue, as they also assess the desirability of resolving the controversy in each of the geographic locales under consideration, the relative docket congestion and likely speed to trial in the two venues, and each court's familiarity with the relevant law.¹⁸⁹ As a Maryland federal court recently summarized, "[legal issues] are best resolved in the federal judicial districts where the vast majority of all relevant facts occurred."¹⁹⁰

3. *Interaction of Venue Selection and Change of Venue Motions*

In civil litigation the party moving to change venue bears the burden of showing that the initial forum inconveniences the parties and witnesses or that the interest of justice would be furthered by transferring the litigation.¹⁹¹ Otherwise, the plaintiff's choice of forum usually will not be disturbed. This creates a bias in favor of maintaining venue in the geographical location the plaintiff originally chose.

However, it is important to remember that civil plaintiffs do not have a free hand in selecting where to file suit. Venue statutes typically limit plaintiffs to locations where the defendant resides or where a substantial part of the claim occurred.¹⁹² As these venue provisions come into play at the commencement of litigation, they situate lawsuits in geographic locations with a substantial relationship to the defendant and the facts of the case, thus protecting the defending party and furthering the administration of justice. They prevent the types of abuses that could result if plaintiffs were permitted to select a venue

¹⁸⁹ See *Rsch. Automation, Inc. v. Schrader-Bridgeport Int'l., Inc.*, 626 F.3d 973 (7th Cir. 2010).

¹⁹⁰ See *Bell*, 758 F. Supp. 3d 390. In this Family Medical Leave Act (FMLA) case, the Maryland district court concluded that the plaintiff did not reside in Maryland and the conduct did not occur there. As trial in Maryland was not more convenient for the parties and the witnesses, the court emphasized the "public interest" factors aiming at "systemic integrity and fairness." *Id.* at 395. The court granted the change of venue to Indiana where the employee resided, most of the events related to the employee's medical condition and inability to work had occurred, and medical treatments had taken place. The employee's supervisors, co-workers, and doctors were likely to be in Indiana.

¹⁹¹ *Intell. Ventures I LLC v. Altera Corp.*, 842 F. Supp. 2d 744, 750 (D. Del. 2012), *mandamus denied* *In re Altera Corp.*, 494 F. App'x 52 (Fed. Cir. 2012).

¹⁹² See *supra* notes 43–56 and text accompanying notes discussing 28 U.S.C. § 1391(b).

anywhere in the United States, no matter how burdensome to the defendant and how favorable for the plaintiff.

Additionally, the pro-plaintiff venue bias wanes when the dispute has weak connections to the venue selected by the plaintiff. Courts require a lesser showing to justify changing venue when the initial choice of forum had no factual nexus to the case and where the requested transfer is to a venue where the moving party has substantial ties.¹⁹³ Furthermore, courts have held that the convenience of the aggrieved party should have the highest priority among the many circumstances relevant to assessing “convenience.”¹⁹⁴

B. Immigration Court Change of Venue

Congress is silent regarding motions to change venue in Immigration Court. The legal authority for transferring immigration cases stems from a one-sentence executive branch immigration regulation.

The Immigration Judge, for good cause, may change venue only upon motion by one of the parties, after the charging document has been filed with the Immigration Court.¹⁹⁵

The terms of the regulation are sparse. Immigration Judges have power to transfer cases only after one of the parties files a motion to change the location.¹⁹⁶ Of note, the government may

¹⁹³ *Trout Unlimited v. U.S. Dep’t. of Agric.*, 944 F. Supp. 13 (D.D.C. 1996), transferred to 320 F. Supp. 2d 1090, stay denied 2005 WL 2141465, appeal dismissed 441 F.3d 1214. See also *Bell*, 758 F. Supp. 3d at 390.

¹⁹⁴ See *Gardner Eng’g Corp. v. Page Eng’g Co.*, 484 F.2d 27, 33 (8th Cir. 1973).

¹⁹⁵ 8 C.F.R. § 1003.20(b).

¹⁹⁶ EOIR acknowledges that it has not always adhered to the regulation’s explicit requirement that there must be a motion requesting a change of venue. EXEC. OFF. FOR IMMIGR. REV., *Cancellation of Operating Policies and Procedures Memorandum No. 18-01* (Apr. 25, 2025). EOIR refers to its “well-established practice of administratively transferring cases when new hearing locations open or current hearing locations close.” *Id.* at 4. It also refers to “clerical” transfers between a detained and non-detained Immigration Court when a noncitizen is released from custody, and to “clerical” transfers of cases nationwide in 2021 in connection with the DHS Migrant Protection Protocols. *Id.* at 4–5. Despite the express regulatory language limiting change of venue to instances when a party has filed a motion, EOIR claims that administrative efficiency and past practice warrant EOIR’s ongoing policy of administratively transferring cases without filing motions even though this “has the same practical effect as a formal COV [change of venue].” *Id.* at 4. Several Sixth Circuit decisions seem to challenge this EOIR perspective. In *Tobias-Chavez v. Garland*, the court said, “there is little question that the Immigration Court . . . violated procedural rules in transferring the proceeding to the newly opened Immigration Court in Louisville sua sponte.” 999 F.3d 999, 1000 (6th Cir. 2021). The court ruled that the noncitizen failed to show any prejudice

move to change venue, even though it initiated the suit and chose the venue in the first place. This gives the government two bites at the apple, magnifying the power imbalance inherent in the initial venue selection process.

The regulation authorizes Immigration Judges to grant change of venue motions for “good cause,” but does not define good cause. Nor does it identify factors for the Immigration Judge to consider. In light of the control the government has over selecting venue, the definition of “good cause” for changing venue is of great consequence. Reviewing opinions that apply the good cause standard reveals the fact-specific nature of the analysis. The judicial opinions examining “good cause” are particularly instructive. They provide important guidance in an area where the majority of change of venue motions are resolved in the Immigration Court without any published opinion, which results in few appellate opinions reviewing the application of the good cause standard.

1. *Good Cause as Interpreted by the BIA*

Although most change of venue motions are decided by the Immigration Judge and therefore go unreported, the Board of Immigration Appeals has over time identified factors that comprise good cause. In *Matter of Rahman*,¹⁹⁷ for example, the Board highlighted the salience of the location of witnesses and evidence, costs, and convenience.

Good cause is determined by balancing the factors we have found relevant to the venue issue [R]elevant factors include administrative convenience, expeditious treatment of the case, location of witnesses, and cost of transporting witnesses or evidence to a new location.¹⁹⁸

The Board further instructed Immigration Judges to provide an accounting of the factors taken into consideration and the weight given to them.¹⁹⁹ The Board also emphasized the responsibility of the Immigration Judge to examine the prejudice

from the transfer, however, and affirmed the decision below. *See also* *Mendoza-Jovel v. Garland*, 860 F. App'x 389, 392 (6th Cir. 2021) (finding no showing of prejudice by sua sponte transfer of venue).

¹⁹⁷ *Matter of Rahman*, 20 I. & N. Dec. 480, 482 (B.I.A. 1992); *see also* *Lowell v. INS*, 52 F.3d 458, 460 (2d Cir. 1995).

¹⁹⁸ *Rahman*, 20 I. & N. Dec. at 482–83 (citations omitted).

¹⁹⁹ *See id.* at 483.

the parties said would occur depending on whether or not the venue was changed.²⁰⁰

In *Rahman*, the Board overturned the Immigration Judge's grant of a motion to change venue from Phoenix, Arizona, where the respondent was detained, to Los Angeles, where he had entered the United States. There was no evidence the respondent had resided in California or anywhere in the United States.²⁰¹ No witnesses were identified in Los Angeles, nor was there a proffer of the relevant witness testimony. The respondent alleged that he had chosen an attorney in Los Angeles, but there was no evidence of a longstanding attorney-client relationship. The government attorneys opposed the change of venue motion, arguing that the respondent had access to qualified legal counsel in Phoenix, a large metropolitan area with an experienced immigration bar. More important, according to the government, was the prejudice it would suffer by having to transport the respondent back and forth between his hearings and place of detention at significant cost and administrative inconvenience. (This was the pre-remote hearing world.) Assessing the totality of these circumstances and the lack of an explanation from the Immigration Judge, the BIA concluded that there had not been good cause to transfer the case to Los Angeles.

Additional BIA opinions have emphasized that the residence of the respondent, the location of witnesses, and the place where the respondent was first apprehended are generally significant elements in determining good cause for changing venue. In *Matter of Rivera*, the BIA reviewed the denial of a motion to change venue from Puerto Rico to New York.²⁰² The noncitizen had been arrested in Puerto Rico, denied he had entered without inspection, and the arresting officers were present in Puerto Rico to testify in response to this denial. The Board concluded that it would prejudice the government to change the venue away from the location of the underlying dispute and to require the government to pay to transport the witnesses from Puerto Rico to New York. The Board stated that the preferred venue should be either the place of the respondent's permanent residence or the place where he was arrested. Since the venue was at the place of arrest and the witnesses were located there, there was no good cause to change the venue.

²⁰⁰ See *id.* at 484.

²⁰¹ *Id.* at 481, 484.

²⁰² *Matter of Rivera*, 19 I. & N. Dec. 688 (B.I.A. 1988).

The Board made a similar point in *Matter of Velasquez*.²⁰³ Immigration officers arrested the respondent in the vicinity of Houston, Texas, issued him an Order to Show Cause in Houston, but then moved him to a detention facility in El Paso, Texas. The government scheduled his deportation hearing in El Paso. The respondent stated it would be inconvenient and expensive to travel to El Paso for immigration hearings and filed a motion to change venue to Immigration Court in Houston, where he resided. The government did not object, and the Immigration Judge found there was good cause to grant the motion. The case went forward in Houston.

2. *Good Cause as Interpreted by the Federal Courts*

The federal courts of appeals have reached similar conclusions in reviewing change of venue motions filed in Immigration Court. In *Garcia-Guzman v. Reno*,²⁰⁴ for example, the federal district court overturned the Immigration Judge's ruling that the respondent, a lawful permanent resident of the United States for more than thirty years when he ran afoul of the law and was sentenced to prison,²⁰⁵ had failed to show good cause for changing venue from Seattle Immigration Court to San Francisco. While incarcerated for driving under the influence of alcohol, Garcia-Guzman had surgery for throat cancer and thereafter lost the ability to speak. He retained an attorney in California, where he resided and was incarcerated. The attorney entered his appearance, explained the medical condition, and requested that removal proceedings take place in northern California.

The government lost Garcia-Guzman's file for six months, during which the government moved him to Seattle without notice to counsel, who learned where his client was on the day of the deportation hearing in the Seattle Immigration Court. The attorney spoke with the Immigration Judge, explained his need to be physically present with his client during the proceedings since he could only communicate nonverbally, and filed a motion for a change of venue to San Francisco. The government opposed the motion, arguing that it would be sufficient for the attorney to appear telephonically. The Immigration Judge said

²⁰³ *Matter of Velasquez*, 19 I. & N. Dec. 377 (B.I.A. 1988).

²⁰⁴ *Garcia-Guzman v. Reno*, 65 F. Supp. 2d 1077 (N.D. Cal. 1999).

²⁰⁵ Garcia-Guzman was sentenced to prison for two years, eight months on charges of driving under the influence of alcohol and inflicting bodily injury on a spouse. See *id.* at 1078-79.

her practice was to grant change of venue motions only if the government consented and that she could not interfere with the government's detention decisions. She denied the motion, the hearing proceeded in Seattle without the attorney present, the Immigration Judge entered an order of removal, and the BIA affirmed.

The federal district court chided the Immigration Judge for her blanket practice of denying almost all change-of-venue motions. The court insisted that Immigration Judges must examine multiple factors in assessing good cause, and listed at least six circumstances that should generally be considered:

- The respondent's place of residence
- The location of witnesses
- The parties' interest in proceeding in a particular location
- The costs of transporting witnesses and evidence to a new location
- Expeditious processing of the case
- Administrative convenience.²⁰⁶

Moreover, the court emphasized that Immigration Judges cannot give dispositive weight to the place of detention:

[A]n order changing venue . . . does not require [the government] to change the place where the applicant is detained. This is why administrative convenience and the interests of [the government] in a particular location are just two of the factors examined when determining whether good cause exists – the agency's financial and logistical interest in holding hearings near the place of detention is not dispositive but rather must be balanced against other factors under the circumstances of each case. [The Immigration Judge must protect] the integrity of the entire process.²⁰⁷

In addition, the court stressed the significance of the statutory right to counsel and the importance of protecting pre-existing attorney-client relationships. To place primacy for venue purposes on the place of detention "would render the right to counsel of choice nugatory. Pre-existing counsel could be thwarted whenever the [government] chose to proceed in a remote location."²⁰⁸

²⁰⁶ *Id.* at 1091.

²⁰⁷ *Id.* at 1092.

²⁰⁸ *Id.*

The Ninth Circuit raised similar concerns in *Baires v. INS*, where it ruled that Immigration Judges cannot prioritize administrative convenience over all other factors in determining whether there is good cause for a change of venue.²⁰⁹ In *Baires*, the respondent promptly traveled to San Francisco to join his family members after his release from his initial detention in Arizona. He managed to locate pro bono counsel within three weeks, and the attorney quickly arranged for expert testimony and located several other potential witnesses in San Francisco. The attorney requested a change of venue to San Francisco, and a continuance, while the respondent returned to Arizona for the scheduled hearing, where he renewed the motions. The respondent showed he had retained an expert witness in San Francisco who could neither travel to Arizona nor prepare written testimony for submission on short notice. He also identified the names of three witnesses in San Francisco and proffered the relevance of their testimony.

The Immigration Judge denied the motions, ruling they had been submitted too close to the scheduled hearing, and he could not rearrange his hearing calendar with only five days' notice. He said, without explanation, that the rationale for change of venue was "not persuasive."²¹⁰ Notably, he did not reject the proffered testimony as "immaterial, unimportant, cumulative, or [unlikely to] contribute to a fair resolution of [the] asylum claim."²¹¹ The Ninth Circuit ruled that the Immigration Court should have weighed the administrative convenience factor along with the nature of the evidence to be presented at the new venue, its importance to the claim, the prejudice that would result from the denial of the motion to change venue, and any prior unreasonable conduct by the parties.²¹² It concluded that there was good cause to change venue to the location of the respondent's family, respondent's attorney, and material witnesses. Accordingly, the court reversed the denial of the motion to change venue.

The Second Circuit has taken a similar approach. In *Monter v. Gonzales*,²¹³ the respondent filed a motion to change venue from Buffalo, where he had been arrested, to New York City. Monter and his wife lived in New York City, where they were

²⁰⁹ *Baires v. INS*, 856 F.2d 89 (9th Cir. 1988).

²¹⁰ *Id.* at 90.

²¹¹ *Id.* at 92.

²¹² *See id.* at 92–93.

²¹³ *Monter v. Gonzales*, 430 F.3d 546 (2d Cir. 2005).

accused of filing a false statement with regard to his petition for permanent resident status. Monter agreed to stipulate to the facts in the NTA, so that there would be no need for government witnesses to appear in Buffalo. The government did not oppose the motion, but the judge denied it, saying that he had a “real funny feeling about” permitting the change in venue.²¹⁴ The Second Circuit concluded that multiple important factors—the respondent’s residence, the principal witness’s residence, the centrality of the witness’s testimony to the underlying legal claim, the lack of government opposition—constituted good cause. It reversed the Immigration Judge’s unexplained denial of the motion to change venue.²¹⁵

Similarly, in *Romero-Morales v. INS*,²¹⁶ the Second Circuit concluded that the Immigration Judge’s analysis and explanation were deficient and remanded the case for an assessment of the factors relevant to good cause.²¹⁷ *Romero-Morales* was initially arrested and detained in Texas. When released from custody, he went to New York where family members could help him financially and testify in his immigration proceedings. He quickly obtained new counsel in New York, who filed a motion to change venue from Texas to New York. The Immigration Judge in Texas learned that *Romero-Morales* had filed a motion to change venue, but declined to read the motion and refused to hear argument concerning change of venue from the original counsel who was present at the hearing.²¹⁸ The Immigration Judge deemed the respondent’s absence from the hearing to be a waiver of his claim for asylum and ordered him deported.²¹⁹ The BIA affirmed.

According to the Second Circuit, neither the Immigration Judge nor the BIA had considered the reasons supporting the motion to change venue to New York: the respondent’s residence in New York, his attorney’s presence in New York, the presence of family members in New York, his plan to call family members as witnesses in the removal proceeding, the lack of family members or financial support in Texas, the government’s lack of inconvenience in that it did not plan to call any

²¹⁴ *Id.* at 551.

²¹⁵ *See id.* at 559.

²¹⁶ *Romero-Morales v. INS*, 25 F.3d 125 (2d Cir. 1994).

²¹⁷ *See id.* at 131.

²¹⁸ *See id.* at 127.

²¹⁹ *See id.*

witnesses.²²⁰ In addition to criticizing the Immigration Judge's failure to provide a reasoned analysis of the relevant factors, the Second Circuit emphasized that too little attention had been paid to the right to counsel:

[I]t was not unreasonable for him to select new counsel on the advice, and with the economic assistance, of his family. The BIA is required to give appropriate consideration to [the] right to retained counsel when deciding motions. As the Supreme Court has noted, "a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality."²²¹

This review of BIA decisions and circuit court opinions concerning good cause for change of venue reveals recurrent issues that the appellate bodies consider significant. They look favorably on motions to transfer to districts where the respondents reside, particularly if there is family support in that location. Transferring to districts where the respondents' legal counsel resides, especially if there is a pre-existing relationship, is also viewed positively. Motions to change venue to a district where witnesses are located tend to be granted, when the respondents specify the potential witnesses by name, proffer their likely testimony, and explain its importance to the case. The respondents' diligence at attending hearings at the initial venue, prior to the motion to change venue, also is important to the judges.

On the negative side, judges tend to look unfavorably at motions to change venue submitted at the last moment before a hearing, particularly if several hearings have already been scheduled and held. Judges tend to discount the significance of the promise of potential witnesses in the new venue if the witnesses are not identified and there is only vague indication of the content of their testimony. Another negative factor has been the cost of transporting respondents and government witnesses to a new location, but the rise of remote hearing technology undercuts the continued relevance of this issue in the current day. Both the BIA and the federal courts recognize that multiple factors are relevant to deciding whether there is good cause to change venue, and they have instructed Immigration Judges to discuss the relevant factors and provide a reasoned explanation of their decision on motions to change venue.

²²⁰ See *id.* at 129.

²²¹ *Id.* at 130.

3. *Change of Venue and Mahmoud Khalil's Removal Proceedings*

If general federal civil litigation venue law applied to Mahmoud Khalil's deportation proceedings, venue would be improper *ab initio* in Louisiana. Khalil did not reside in Louisiana, nor had he previously resided in Louisiana. His presence in Louisiana was solely due to federal immigration officials transporting him there involuntarily. Whatever his unspecified activities were that allegedly injured the foreign relations of the United States, they did not occur in Louisiana.

Moreover, under general civil litigation principles, a defending party has the right to have the case dismissed if it has been initiated in an improper venue.²²² Dismissal for lack of venue is one of the few defenses that is so fundamental that litigants can raise it before they file a response to the charging document.²²³ In other words, federal civil litigation treats improper venue as a defect that needs to be rectified before parties can be required to proceed. Being forced to litigate in a geographic location unconnected with either the defending party's residence or the underlying conduct so undermines fair adjudication that the case should be dismissed rather than allowed to continue. As a consequence, if general federal litigation principles applied, Khalil would have been able to file a successful motion to dismiss the case due to improper venue in Louisiana.

Alternatively, Congress has provided an avenue for a defending party to seek to transfer a lawsuit from an improper venue to one that is proper. Therefore, if the general venue provisions applied to Khalil, he would have had the option to transfer the case from the improper Louisiana venue to a court in which venue is acceptable.²²⁴ The circumstances reported about Khalil's case indicate that venue would have been proper in the New York federal court that encompasses Manhattan, where he lived and went to graduate school. Consequently, if the rules of federal civil litigation applied to Khalil, he would

²²² See FED. R. CIV. P. 12(b)(3).

²²³ See *id.* Venue is one of the seven defenses that a defending party has the right to raise before being required to file a responsive pleading.

²²⁴ 28 U.S.C. § 1406 provides that courts may dismiss a case filed in an improper venue or transfer it to a federal district that has proper venue. See *supra* note 180. Accordingly, under general federal venue law Khalil could presumably file a successful motion to dismiss the Louisiana proceedings pursuant to FED. R. CIV. P. 12(b)(3), or a motion to transfer the proceedings to the Southern District of New York or some other federal court with proper venue pursuant to 28 U.S.C. § 1406.

have had two remedies: dismissal for lack of venue in Louisiana and/or change of venue from Louisiana to New York. Neither of these is available in Immigration Court, demonstrating once again the venue exceptionalism of Immigration Court.

Even for cases initially filed in a proper venue in federal court, Congress has provided a tool to move the litigation to a more effective venue. The statutory provision, 28 U.S.C. § 1404(a), provides that reasons of convenience and justice support transferring a case to another geographic location. If Khalil had filed a motion for change of venue under this statute, both the convenience and the administration of justice factors would militate in favor of transferring the case to New York. The inconvenience of litigating in Louisiana is obvious and inordinate for Khalil, whose family, friends, and neighbors live in New York. Since his release from detention, he has been living in New York City.²²⁵ The witnesses and other evidence concerning Khalil's protest activities are all likely to be in New York, where they would find it much more convenient to appear in court. The inconvenience is exacerbated by the disparity of resources in the parties: Khalil, a recent graduate student of limited means, faces the U.S. government. Moreover, Khalil has longstanding ties to New York and to Columbia University; he is not a recently arrived resident of New York City.

A key aspect of an inquiry into efficient administration of the court system is a comparison between the relationship of the controversy to both the initial venue and the requested change of venue. Here, again, there is nothing other than the government's midnight flight delivering Khalil to Louisiana to tie the proceedings to the federal Immigration Court located there. In contrast, everything else about Khalil's case links him to federal Immigration Court in New York.

Another factor relevant to the interest of justice is whether there is likely to be public interest in resolving the legal dispute in a specific geographic locale. In this regard, the public nature of the protests on and near the Columbia University campus in New York City, Khalil's interactions with Columbia University administrators and students, and his status as a resident of New York City are pertinent. Undoubtedly, New Yorkers will be more interested in following the proceedings than the residents of Louisiana. As a consequence, the public interest weighs in

²²⁵ See Nina Lakhani, *Mahmoud Khalil reunites with family after more than 100 days in Ice detention*, THE GUARDIAN (June 21, 2025), <https://www.theguardian.com/us-news/2025/jun/21/mahmoud-khalil-released-family> [https://perma.cc/3J4G-BJHC].

favor of transferring the proceedings to New York Immigration Court.²²⁶

Turning from traditional venue laws and practices to the immigration regulation, it is clear that it, too, would warrant transferring Khalil's removal proceedings to New York Immigration Court. The regulation expressly authorizes changes of venue for good cause. In *Rahman*, the BIA identified multiple circumstances, such as the noncitizen's place of residence, the location of witnesses and the centrality of their testimony, the location of counsel, costs, and convenience, that Immigration Judges should consider in assessing whether there is good cause to transfer a case.

Most of the *Rahman* factors weigh in favor of changing the venue of Khalil's removal proceedings from Louisiana to the New York Immigration Court. Khalil resides in New York and has for several years. Khalil's allegedly wrongful conduct apparently occurred in New York, and witnesses to it would be located in New York. Those who observed Khalil in person are likely to be central to the proceedings and localized in the New York region. The costs of transporting these witnesses and evidence to Louisiana would be great and proceeding without them would likely impede Khalil's ability to rely on relevant favorable evidence. Furthermore, Khalil had previously sought legal assistance regarding his immigration status and had pre-existing—and continuing—relationships with immigration attorneys in the New York area.

There is no reason to believe that Khalil's case would be handled more expeditiously in Louisiana than in New York. As to the administrative convenience of the government, it is hard to assess without knowing the precise arguments the government might make. The case law considers administrative efficiency as a relevant factor, although it cautions that efficiency on its own is not a determining factor. On these facts, Khalil would be able to demonstrate good cause to change the immigration venue to New York Immigration Court.²²⁷

²²⁶ Other factors are pertinent to the administration of justice prong of change of venue analysis, such as the docket congestion in the two venues and each court's relative familiarity with the relevant law. See, e.g., *Rsch. Automation, Inc. v. Schrader-Bridgeport Int'l., Inc.*, 626 F.3d 973, 978 (7th Cir. 2010). This would be unlikely to play a role in the Khalil circumstances. Immigration Judges in both venues would be familiar with the applicable immigration law; docket congestion would not likely stand in the way of going forward with a high-profile deportation hearing in either venue.

²²⁷ Khalil's removal hearing continues to be located in Louisiana Immigration Court. The New Jersey federal district judge presiding over Khalil's habeas

IV

RECALIBRATING IMMIGRATION VENUE

Since Congress has not spoken about venue in the Immigration and Nationality Act, the time-honored policies undergirding venue should continue to guide adjudication. If not, immigration venue is an outlier without having to justify its exceptionalism. Assuring noncitizens fair proceedings, access to evidence and the administration of justice should continue to play key roles in selecting the venue for immigration litigation. These also should be essential and explicit components of decisions on motions to change venue.

Current immigration venue regulations fail to furnish adequate guidance for the traditional in-person removal proceedings. The situation is even more confounding in remote proceedings that frequently involve circumstances that link multiple geographical locations to the defending party and the dispute. At this juncture, and in light of the technologies currently employed in Immigration Court, it is important to set forth guidance regarding the geographic location of removal proceedings.

proceedings issued an order preliminarily enjoining the United States from seeking to remove Khalil based on the Secretary of State's determination that his activities would have potentially serious adverse foreign policy consequences for the United States. *See Khalil v. Trump*, 2025 WL 1649197 (D.N.J. June 11, 2025). Roughly one week later the Louisiana Immigration Judge entered an order of removal against Khalil. *See In the Matter of Mahmoud Khalil*, No. 25-cv-01963 (MEF) (MAH) (D.N.J. June 20, 2025) (ECF 332-1). Subsequently, the New Jersey federal district judge issued an order clarifying that the Immigration Judge's June 20th removal order had failed to comply with the preliminary injunction and should be vacated. *See Khalil v. Trump*, No. 25-cv-01963 (MEF) (MAH), 2025 WL 1983755 (D.N.J. July 17, 2025). The Immigration Judge, who had ruled from the bench on April 11, 2025 that Khalil was removable based on the Secretary of State's determination, memorialized this decision on June 20. *See Doc. 332*, Letter from Petitioner: Update on Respondents' Interpretation of Prelim. Injunction at n.1, *Khalil v. Trump*, No. 25-cv-01963 (MEF) (MAH), 2025 WL 1983755 (D.N.J. July 17, 2025). The Immigration Judge later issued a notice that she had vacated the order. *See Defendant's Letter to Hon. Michael E. Farbiarz*, Notice of Compliance with the Court's July 17 Order, *Khalil v. Joyce*, Doc. 372 (filed Aug. 8, 2025). In the meantime, the New Jersey federal district judge denied Khalil's motion to preliminarily enjoin removal proceedings based on the allegation that he had made misrepresentations in the application he had filed for adjustment of status. *See Khalil v. Trump*, No. 25-cv-01963 (MEF) (MAH), 2025 WL 1514713 (D.N.J. May 28, 2025). Several months later the judge denied a renewed preliminary injunction motion concerning these charges (*Khalil v. Trump*, No. 25-cv-1963 (D.N.J. Aug. 8, 2025)). The removal proceedings continued in Louisiana Immigration Court. The BIA upheld the finding that Khalil was removable and not entitled to a waiver. *Matter of M-K-*, 29 I. & N. Dec. 556 (B.I.A. 2026).

Today, the government has all the power to determine venue. Respondents' requests to dislodge the government's choice of venue are consigned to judicial discretion that has been unevenly exercised. Ideally, Congress will draft venue legislation for Immigration Courts. In the absence of legislation, DHS should issue guidelines and EOIR should draft a well-rounded set of venue regulations for Immigration Court proceedings. If neither Congress nor the Executive agencies address venue for hearings in Immigration Court, federal circuit courts, in concert with the Board of Immigration Appeals and Immigration Judges, can act in the common law tradition to set forth principles to assure fair and practical venue decisions.

A. A Proposal to Ameliorate Venue Exceptionalism

To provide a new approach to venue determination, DHS, when initiating proceedings, and EOIR, when presiding over proceedings, should employ a set of presumptions to guide their venue decisions. This guidance is grounded in the following current realities:

- Remote hearings are part of the system with many advantages to both parties; this is unlikely to change.
- Detention as a tool of administrative control is a permanent feature of removal proceedings and, under the current administration, appears to be growing exponentially.
- There are demonstrated adjudication disparities at every level of removal proceedings.
- The government is taking advantage of these disparities and making no efforts to reduce them.

Two basic presumptions should apply to venue determinations.²²⁸ The discussion sets forth different scenarios in which the presumptions might arise and ways in which the presumptions may interact with each other. It also addresses potential rebuttals of the presumptions, and the need for demanding standards in evaluating whether the presumptions should be overridden.

Presumption #1: Venue for removal hearings should be located primarily in the Immigration Court for the geographical

²²⁸ "A presumption is an inference the law requires when certain facts are present." Legal Information Institute, Wex (July 2025), <https://www.law.cornell.edu/wex/presumption> [<https://perma.cc/RRJ8-EHD2>].

area where the respondent resides and secondarily where substantial conduct related to the removal charges took place.

This presumption embodies the historical approach to venue in general federal civil litigation. It also embodies the practice employed by Immigration Courts across the nation in the era before remote hearings were a significant component of adjudication and before the growth of the population detained pending their removal hearings. Although in the past some noncitizens charged with removal were detained, the number detained during their removal proceedings has increased significantly over time,²²⁹ and has risen sharply as of 2026.²³⁰ Furthermore, in the past, the detention facility was often located in the vicinity of the noncitizen's residence.

Tying the venue to the respondent's pre-arrest residence or the area where substantial relevant events took place continues to be important, particularly now with the much greater use of detention.²³¹ The evidence, witnesses, and resources for the respondent are likely to be in these traditional venue sites, no matter where the respondent currently is located. With regard to respondents who are detained, their location in a detention facility should not, in itself, affect the venue. Ideally, a detained individual should be able to appear in person at the Immigration Court where the respondent resided or acted. But if the respondent cannot appear in person at the Immigration Court with proper venue, video links can allow the detained individual to appear remotely.

Many individuals placed in removal proceedings have lived in the United States for a significant period of time. Their residence should be easy to ascertain. Establishing venue at their residence fits within the traditional venue considerations and helps protect the fairness of their removal hearings. The respondent is most likely to have legal, familial, community,

²²⁹ Between 1994 and 2017, the average daily detained population rose from 6,785 to 38,106. See Emily Ryo & Ian Peacock, *The Landscape of Immigration Detention in the United States* 6, AM. IMMIG. COUNCIL (Dec. 2018), https://www.americanimmigrationcouncil.org/wpcontent/uploads/2025/01/the_landscape_of_immigration_detention_in_the_united_states.pdf [<https://perma.cc/46JB-8BYX>].

²³⁰ As of April 4, 2026, 60,311 individuals are being held in ICE facilities. See *Immigration Detention Quick Facts*, TRAC IMMIGR., <https://tracreports.org/immigration/quickfacts/> [<https://perma.cc/K5AJ-BSNL>].

²³¹ For the purpose of this presumption, we adopt the view of a majority of federal district courts that the statute authorizing mandatory detention throughout removal proceedings of noncitizens who "seek admission" does not continue to apply to noncitizens who are long-time residents living in the interior of the United States. See Cheney, *supra* note 177.

financial, and emotional resources to help prepare an adequate response to the removal charges in the geographical area where he or she resides. The government should not be able to gain an advantage from isolating a respondent or interfering with access to resources by moving a respondent to a distant location. Repeatedly transferring a respondent between detention centers, a recurrent and troubling practice, should also not advantage the government by providing it additional venue options.²³²

In some instances there may be substantial evidence relevant to the removal charges or to potential grounds for relief located somewhere other than the respondent's residence. So long as situating venue in this other location does not impair the respondent's ability to mount a robust defense to removal, this presumption would permit venue to be situated where relevant, substantial, and contested evidence is available. It should be noted, however, that charges of unlawful entry into the United States which the respondent does not contest would be an inadequate basis to situate venue at the place where the respondent entered the country. The uncontested details about where the respondent crossed the border would not be sufficiently significant that they should dictate the location of the Immigration Court removal hearing, particularly when a respondent has resided in the country for some period of time. In such situations the appropriate venue would remain the respondent's residence.

Venue considerations may well be different, however, for noncitizens arrested shortly after they enter the United States and detained close to the U.S. border. They are unlikely to have established a residence in the United States. As recent arrivals, they probably lack the community ties and connections that longer-term residents have. Some may be subject to expedited removal under INA § 235(b) and not entitled to removal hearings pursuant to INA § 240. When noncitizens have been present such a short time that it is not reasonable to conclude they established a residence, they generally would not benefit from this presumption.

Presumption #2: If venue for a removal hearing is not located in accordance with presumption #1, a motion to change venue to the place where the respondent resided or where substantial

²³² Kate Morrissey, *ICE Is Transferring People in Its Custody Away From Family, Lawyers*, CAPITAL & MAIN, Sep. 23, 2025, <https://capitalandmain.com/ice-is-transferring-people-in-its-custody-away-from-family-lawyers> [<https://perma.cc/9K9H-8NSZ>].

conduct related to the removal charges took place should be granted for good cause.

As the case law explains, good cause for changing venue has traditionally encompassed transferring the case to the location where the respondent's family and/or the respondent's lawyer reside, transferring to a location where documents and central witnesses are available, and transferring when the local community has an interest in the resolution of a case. The BIA *Rahman* opinion has spelled out factors that Immigration Judges should consider in weighing a motion to change venue,²³³ and the federal circuit courts have upheld and expanded upon this approach.²³⁴ The BIA and federal court precedent align with this presumption that venue should be changed to the Immigration Court where the respondent has resided or where the alleged unlawful conduct occurred. Accordingly, Immigration Judges should robustly apply *Rahman* to motions to change venue, which should, in turn, lead to more venue decisions that accord with fairness to the defending party, convenience for parties and witnesses, and the administration of justice.

Several other observations are relevant to this presumption. It would not prohibit considering whether good cause exists for transfers to venues other than those listed in the second presumption. A respondent might, for example, show that there is good cause due to medical or family reasons to transfer the case to a location where his family now lives but he never resided.

Transferring the respondent between detention facilities during the removal proceedings may happen, but this generally is not good cause for changing venue. The detention occurs after the fact; evidence relevant to the charges filed by the government is unlikely to be connected to the locale of the detention facility. Nor are the defending party's legal, family, and financial resources likely to be linked to the place of detention. There may be occasions when specific circumstances lead respondents to request that venue be situated at the detention facility, but this should not be a default position. The actual physical location of the respondent is less important than tying the removal proceedings to the place where the underlying conduct occurred or the respondent resided.

²³³ See *supra* notes 197–202 and accompanying text.

²³⁴ See *supra* notes 208–225 and accompanying text.

Under these two presumptions, most removal proceedings should result in venue being set in the geographical location of the respondent's residence or where substantial contested evidence of the allegedly unlawful acts is located. Accordingly, the law of the federal appellate circuits encompassing these venues—the place where the respondent was residing when the government arrested them and initiated removal proceedings or the place where the respondent had committed the allegedly unlawful acts—should apply during appellate review. Thus, if a respondent's motion to transfer for good cause moves the proceeding to the place where the respondent had been domiciled, the appropriate place to file a petition for review would be in the federal circuit in which the transferee court (the Immigration Court for the respondent's domicile) is located.

Establishing presumptions of proper venue in these terms corrects the imbalance inherent in the current asymmetry, returning venue to its traditional objectives of fairness and convenience to the defending party. But, like presumptions in many other contexts, the government can attempt to rebut them. Because the presumptions embody the long-respected values of venue, the government should be able to overcome them only if the government can make a strong showing of overriding administrative imperative. In other words, given the availability of remote hearings and electronic records, the government would have to offer more than the standard argument that it would be less expensive and more convenient for the government if the Immigration Judge denied a motion to change venue to the respondent's place of residence. Unless the government shows significant inconvenience or interference with orderly processing, the presumption would prevail. As an example, the government might be able to rebut the presumption by showing that the respondent made a last-minute, untimely, or mid-hearing request for a change of venue. Alternatively, the government might be able to rebut the presumption of changing venue to the place where the underlying conduct took place if the government could show that no witnesses or documents exist in that location that address the conduct in question.

In addition to these presumptions, which address venue directly, there are several secondary concerns that venue decisions commonly raise. The following guidelines address these ancillary issues by requiring active judicial involvement in venue determinations. They will help implement the presumptions set forth above and provide a remedy for forum shopping by the government.

Guideline #1: *Immigration Judges have a responsibility to inquire into the appropriateness of the venue and the respondent's preference.*

If venue for a removal hearing is not located in accordance with presumption #1, Immigration Judges should affirmatively inquire whether the respondent wishes to make a motion to change venue. Immigration Judges are charged with the duty to oversee a fair proceeding and to ensure that parties understand their legal rights and obligations.²³⁵ A key factor in being able to mount an effective response to government charges is to have access to relevant evidence and to have the legal, financial, and emotional resources to be able to prepare a meaningful presentation of the evidence. The ability to change venue is a tool provided by the regulations and in line with standard litigation practice. Immigration Judges who explore the suitability of changing venue act to further justice in removal proceedings.

As the case law requires,²³⁶ Immigration Judges should provide a reasoned explanation of the factors they considered in ascertaining whether there was good cause to change the venue. These accounts are important for appellate review, and they are also important so that the litigants understand the judge acted in a considered manner, rather than arbitrarily.

Guideline #2: *The law that applies is the law in the circuit court that has jurisdiction over the Immigration Court in the geographic area where the respondent resides or the underlying conduct occurred.*

Notice is a key aspect of fair procedures. It is reasonable that the respondent expects to comply with the law for the place where the respondent resides and/or the conduct took place. Similarly, it is reasonable to align the applicable law in Immigration Court proceedings and on appeal with the law for the geographic area where the respondent resides or the underlying conduct occurred. This provides the respondent with notice of the law that will apply in the removal proceedings, and the

²³⁵ The immigration judge has the statutory duty to receive evidence, interrogate, examine, and cross-examine the respondent and any witnesses (INA § 240(b)(1) (codified at 8 U.S.C. § 1229a(b)(1))). As an administrative judge, the IJ has the duty to fully and fairly develop the record. *Jacinto v. INS*, 208 F.3d 725, 733 (9th Cir. 2000). When the individual appears pro se, the administrative judge must “scrupulously and conscientiously probe into, inquire of, and explore for all relevant facts.” *Id.* The Fifth Amendment requires that individuals in removal hearings receive a full and fair hearing. When their rights to a fair hearing have been violated, there is likely to be a prejudicial impact on the results of the proceeding. *Id.*; accord *Serrano-Alberto v. Att’y Gen.*, 859 F.3d 208 (3d Cir. 2017).

²³⁶ See *supra* notes 203, 219–21, 224–25 and accompanying text.

respondent's attorney will be able to rely on the pertinent precedents. Moreover, adopting this approach in the Immigration Court, the BIA, and on appeal in the federal circuit court will increase consistency and predictability.

Based on the presumptions set forth above, the initial venue should be in the Immigration Court for the area where the respondent resided or, more rarely, where there is substantial contested evidence of the underlying conduct. If the initial removal proceedings are situated elsewhere, a motion should be granted to change venue to the Immigration Court for the area where the respondent resided or where substantial contested evidence is located. After the respondent's motion has been granted, the receiving court should apply the precedent of the federal circuit in which the receiving court is located. This should be the law of the circuit in which the respondent either resided or important contested evidence can be found.

B. Applying the Proposal to the Khalil Deportation Proceedings

The Immigration Judge in Louisiana denied Khalil's motion to change venue without any explanation or analysis.²³⁷ This denial flies in the face of current BIA precedent, as well as traditional venue principles. Had the Immigration Judge applied these presumptions, the motion could not have been decided summarily and would have likely been granted.

The first presumption calls for Khalil's removal proceeding to take place in New York Immigration Court. It is undisputed that Mahmoud Khalil and his family have resided in New York for several years and that New York is where there is substantial relevant evidence of the underlying conduct that the government alleges renders Khalil deportable. Locating the proceedings in New York Immigration Court would accord with traditional notions of venue in civil litigation.

It is likely the government would argue that factors such as overcrowding in detention facilities, availability of immigration agents, and other staffing and logistical issues were valid reasons to set the venue in Louisiana Immigration Court rather than New York. In response, Khalil's attorneys would no doubt argue these rebuttal arguments are not persuasive because there are detention facilities in the New York metropolitan area,

²³⁷ See Order denying motion for change of venue, Sep. 12, 2025. Exhibit B, Letter to U.S. District Judge Michael Farbiarz, Sep. 17, 2025, Khalil v. Trump, No. 2:25-cv-1963 (MEF)(MAH), Document 378.

as well as three immigration courts in lower Manhattan, one of which exclusively handles detained hearings. They would also likely argue that the rapid transfer of Khalil outside of New York City during the middle of the night in contradiction of information that federal agents provided to Khalil's wife about his detention location undermined the claim that routine administrative convenience motivated the transfer. They would also likely argue that the government's selection of a venue so far from New York and Khalil's long-term immigration attorney appeared strategic and abusive, rather than ordinary and logical.

It is possible that other details would emerge from the government's effort to rebut the presumption. In light of the facts that have become public, there is strong support for findings of both improper venue and government abuse. Based on what is known thus far, the venue for proceedings of Khalil, a lawful permanent resident, presumptively should have been the New York Immigration Court *ab initio*.

The reality, of course, is that the government filed the NTA against Khalil after transporting him from New York, through New Jersey, to Louisiana. Consequently, the Immigration Court in Jena, Louisiana, has venue over the proceedings. Pursuant to the proposed guidelines, the Louisiana Immigration Court assigned Khalil's case would be responsible for assessing the appropriateness of Louisiana as the location of the removal proceedings and for seeking Khalil's preferences regarding venue.

Furthermore, because the Louisiana venue does not accord with either Khalil's place of residence or the place where the underlying conduct occurred, the Immigration Judge should have applied the second presumption. A motion to change venue to New York Immigration Court would be presumed to constitute good cause because Khalil, his family, and his attorneys all reside there, and the conduct that the government has challenged also occurred there. If the government attempted to rebut the presumption by arguing that Khalil is physically detained in Louisiana, Khalil's attorneys could respond by seeking Khalil's release from detention pending the removal hearing. Once released, he could return to his family's residence in New York and participate in the removal proceedings there. Even if Khalil were not released from detention, the government's increasing reliance on technology makes it easy for Khalil to appear remotely from Louisiana for removal proceedings in New York Immigration Court. In the era of remote hearings, detention in another state does not constitute grounds for retaining venue in a faraway locale. It does not suffice to overcome the presumption that there is good cause to transfer Khalil's removal

proceedings to the venue where he resides and where his actions took place.

If the venue were changed to New York, according to the proposed guidelines, the law of the Second Circuit would apply. This would align the substantive law precedents employed in Immigration Court with the law generally applicable in the locale where Khalil lived and worked.

CONCLUSION

Recent events have demonstrated how easily centuries of legal traditions and venue norms—and standard Immigration Court practice—can be turned upside down. The government has wielded its current unilateral power to select venue to create unfair circumstances for litigating deportation cases. If the government had not been acting manipulatively and abusively, it would have served Khalil's NTA in New York where it arrested him. The government would have been able to present its case fully in New York Immigration Court, while the geographic location of the proceedings would have made it easier for Khalil to prepare and present his defense. Instead, the government delayed filing charges until the government had transported Khalil to a detention facility located within the geographic scope of the notoriously immigrant-unfriendly Fifth Circuit. Thus, the government simultaneously chose the law it preferred and a location likely to impede Khalil's access to his counsel, family support, and sources of proof.

As it turned out, Khalil's case attracted national attention, which exposed the government's unfair manipulation of immigration venue. Although Khalil's situation and that of other high-profile individuals have exposed this trend, they are only the tip of the iceberg. Government agents are snatching more and more noncitizens, including longtime residents, on streets, at factories, and in courthouses, and are whisking them away to detention facilities far from their domiciles and communities.

In the face of these abuses, this proposal to recalibrate venue determinations could rebalance the current asymmetry and correct the deviation from longstanding principles. The centuries-long history of venue is still relevant in twenty-first century deportation proceedings. Venue remains a tool to protect defendants by allowing them to present their cases from their places of residence and to connect litigation to the geographic locations where the disputes arose. Venue protections and motions to change venue should continue to be valued in Immigration Court where the stakes—banishment from the

country where individuals may have resided for years—are immense.

The presumptions set forth here would help effectuate the appropriate litigation balance. Either initially or pursuant to a motion for change of venue, removal hearings should be held where the individual resides or where the conduct occurred. Ironically, remote proceedings could be one tool to help restore fairness in some Immigration Court removal hearings involving detained noncitizens. The proposed presumptions would generally lead to venue in the Immigration Court that encompasses the noncitizen's residence and/or place of conduct. The fact of detention in a distant facility would not undercut the desirability of the venue in the "home" Immigration Court. Ideally, a detained individual could be released from detention pending the hearing and could appear in person at the "home" Immigration Court. If release is not possible, the detained individual could appear remotely via video link at the "home" Immigration Court.

Absent legislation or formal regulation, EOIR and the reviewing federal appellate courts can utilize these presumptions to promote litigation fairness for individuals whose freedom is under threat. The presumptions have the advantage of simplicity and tradition. With them, venue would revert to its historic roots and to pre-remote era Immigration Court practice.