

# Bearing Witness:

## A report of the Cleveland Immigration Court Monitoring Project



# Overview of the Court Monitoring Project

The inner workings of the immigration system in the United States remain a mystery to many, and immigration court is perhaps the least understood aspect of the system. Although immigration court hearings are open to the public, few witness the proceedings.

The Cleveland Immigration Court Monitoring Project began in October, 2018 in an effort to bring transparency and accountability to the system. The Immigration Working Group CLE, in collaboration with Cleveland Jobs with Justice and Indivisible CLE, trained a team of 16 volunteers to record quantitative and qualitative findings in Cleveland Immigration Court. While this report is limited to data collected between November 2018 and July 2019, the project continues today and has grown to include dozens of volunteers observing cases each day the court is in session.

While our report focuses on this particular set of observations, it would be a mistake to conclude that the issues outlined below stem from individual problematic judges or other actors in the system; rather, what observers noted is an indictment of the system as a whole. Basic human and constitutional rights (including the right to due process) are severely limited or non-existent in immigration courts throughout the United States. While we do name specific individuals throughout the report, we urge you to use this data not to focus on personalities but instead to call into question the workings of the system as a whole. The deficiencies noted by observers highlight systemic fundamental failures of US immigration policies, laws and practices and call us to advocate for a more just system that supports human rights and dignity.

## Our Method

Court observers were trained by a team of community leaders and were taught standards for practice in immigration court and observational documentation. Observers who completed and passed the training attended bond hearings and master calendar hearings in the Cleveland immigration court that were open to the public and documented occurrences using a standardized rubric for documenting observations. (See Appendix A for an example of the standardized court observer rubric). Observers were required to note when information was missing from a given field and to indicate where, if at all, information was incomplete.

Completed rubrics were converted into electronic format and uploaded into a centralized database by a remote research team on a daily basis. Data analysis was done both qualitatively and quantitatively. Quantitative data were imported into STATA V.15 (StataCorp LCC, Texas), which was used to conduct univariate analysis using non-missing data to generate summary measures (including means, medians, modes and ranges). Qualitative data were coded and analyzed thematically.

# How is immigration court different than other courts?

Immigration legal proceedings are civil, not criminal proceedings. Immigration courts do not try any criminal offenses. If an immigrant had committed a crime, their hearing for that crime would take place in a different court in front of a criminal judge.

Immigration court is an “administrative court” under the executive branch of the federal government and is not part of the judicial branch.

Even though people in immigration hearings are on U.S. soil and may have lived in the US with a legal status for as many as 20 years (based on court observations), they are not given the same constitutional rights in court that court observers expected to see.

Detained immigrants are called “respondents,” not “defendants,” and are not entitled to legal representation by public defenders.

The laws that apply to immigration cases frequently shifted during the court observation period from November 2018 to July 2019.



# What rights do people have in immigration court?

During the period of observation, people being brought to court for immigration hearings do have rights including, but not limited to:

## 1. Representation by an attorney (“competent counsel”) at no cost to the US government.

A nationwide study of more than 1.2 million deportation cases revealed that only 37% of all immigrants and merely 14% of detained immigrants were represented for any portion of their immigration proceedings and “only 2% of immigrants obtained pro bono representation from nonprofit organizations, law school clinics, or large law firm volunteer programs” (Eagly and Shafer 2015).

## 2. A hearing before a fair and impartial arbiter (per 5th Amendment).

In practice, the immigration court is part of the executive branch (under the DOJ), not the judicial branch. Functionally, this means that immigration judges are not independent of the Attorney General and are not independent of DHS (including ICE).

Immigration judges are appointed by and can be fired by the attorney general. If the decision of an immigration judge is appealed, it will be reviewed by the Board of Immigration Appeals (BOIA), which is composed of up to 15 immigration judges (currently there are 14 sitting on the panel) hand-selected by the attorney general. The attorney general can cancel or return any decision by an immigration judge and any decision by the BOIA.

### **3. To be treated with respect and not be mistreated.**

Most of the immigration court staff were professional and respectful to everyone in hearings. However, observers documented instances when immigration judges have scoffed at and berated asylum seekers for becoming emotional in court. Observers also documented instances of disrespectful off-the-record mocking respondents. Some immigration hearings are virtual. Detained people are video-chatted in from the prison or jail where they are detained, and the connection is often less than ideal. Several (but not all) of the judges respond angrily when a detainee says he did not understand because the connection was bad.

### **4. “Meaningful access to immigration court” via interpreters where necessary.**

Observers documented that interpretation services made available in court settings are often woefully inadequate to the task of allowing respondents to comprehend their own hearings. During the observation period, it was not uncommon for an immigration judge to require someone who speaks a local dialect like Quiché, Chol, or Kekchi to work with a Spanish interpreter or someone who speaks Lingala or Wolof to work with a French interpreter to avoid having to go through the pain of finding an interpreter for those languages. Observers noted that immigration judges frequently asked immigration attorneys to have their clients “waive the right to full interpretation.”

#### **CASE EXAMPLE 1**

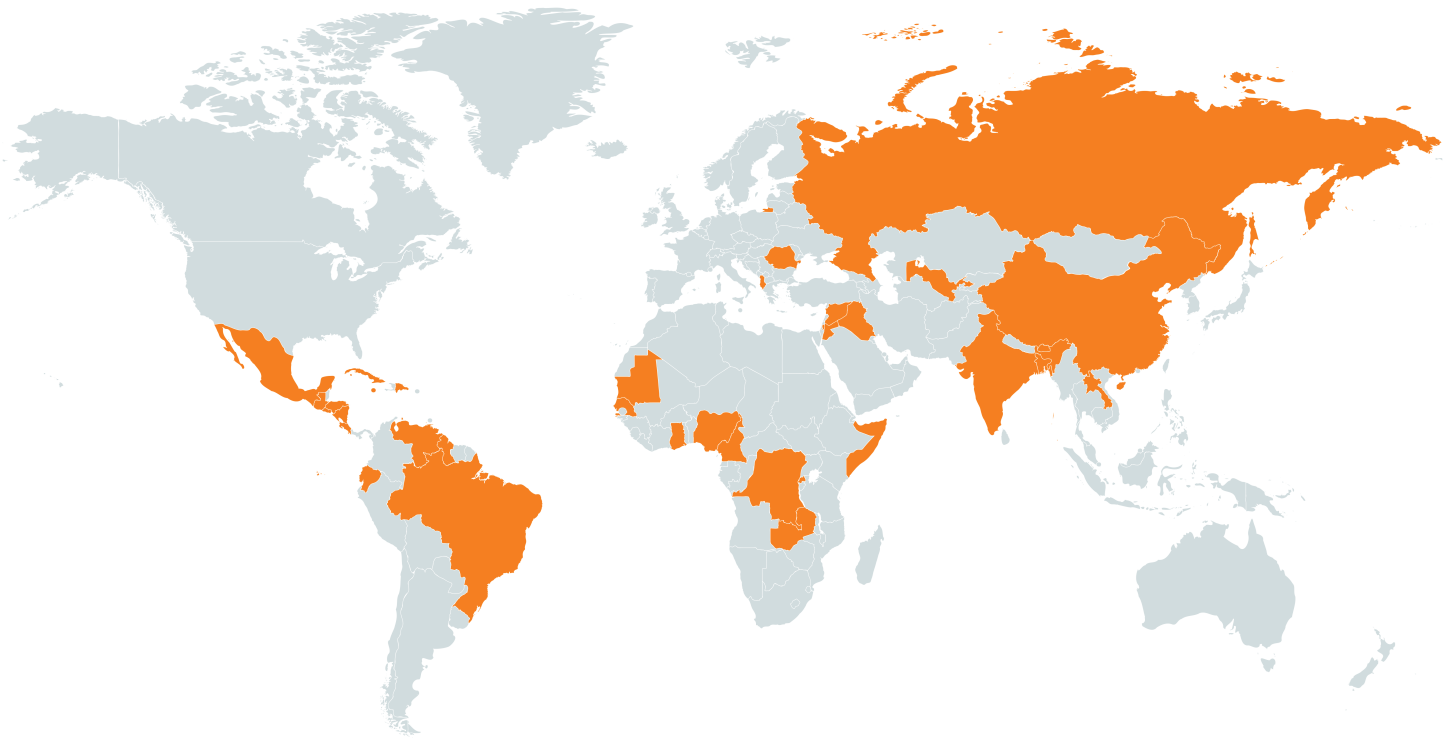
### **“Pack them closer together”**

Observers noted that Immigration Judge Hunsucker completed trials of people represented by attorneys first, hearing them one by one. After that, when the courtrooms emptied and attorneys left, he would call the remaining immigrants who did not have attorneys to sit side-by-side in the room in a jail where they were located, in front of the camera and be tried at once.

“Officer,” he called out to a corrections officer through the video-call, “I’m going to need you to pack them closer together so I can see everyone.”

He saw four or five immigrants at a time, barking orders and forcing them to sit touching one another without room to move their arms so that he could see all of them on the video screen. Off the record after one of these group hearings, one observer heard this immigration judge brag to the government attorney that he knew how to “move things along efficiently.”

# Who ends up in immigration court?



People in Cleveland immigration court came from many different countries, including Honduras, El Salvador, Guatemala, Mexico, Rwanda, Uzbekistan, Nicaragua, Jamaica, India, China, Jordan, the Democratic Republic of Congo, Cuba, Bhutan, Zambia, Cameroon, Singapore, Laos, Senegal, Albania, Syria, Nigeria, Ecuador, Ghana, Bangladesh, Costa Rica, Romania, Venezuela, Russia, Brazil, Somalia, Guyana, Dominican Republic, Israel, Mauritania, and Iraq.

Some of the people brought before immigration court had lived in the US for more than 20 years, and others had entered the US only months before appearing in court.

People of all ages were brought before immigration court. Court observers expressed surprised to find many children had to appear in immigration court, with the youngest “respondents” in immigration court being toddlers. There were also many elderly respondents, over 70 years of age, some of whom had difficulty walking, hearing, or remembering what was said to them.

# What are detained hearings?

The United States government detains **more than 50,000 people** in immigration custody on any given day. These people may include undocumented individuals who recently arrived in the US, undocumented individuals who have lived and worked in the US for years, long-term lawful permanent residents and individuals seeking asylum.

In Ohio during the data collection period of this report, individuals were detained at Geauga County Safety Center, Seneca County Jail, Butler County Correctional Complex, Morrow County Correctional Facility and Northeast Ohio Correctional Center in Youngstown, Ohio, a private prison run by CoreCivic.

While people with experience observing other courtrooms (for example, in traffic court or criminal court), might be used to seeing the person on trial be physically present in the courtroom, seated at a table across from the judge. This is not what happened in most of the immigration court cases that court observers were able to watch. In immigration court, hearings could be remote or in-person.

Hearings on a **“detained docket”** are remote. This means they are held through a video call, specifically using the Department of Homeland Security videoconference technology. The immigrant respondent—a person being held in immigration detention—would be called in to appear on a video screen from a room in the prison or jail contracted by Immigration and Customs Enforcement, where they are held in administrative detention.

Typically, the camera in these hearings allows the immigrant a full view of the immigration judge and an almost full view of an in-person interpreter when there is one in the courtroom. However, unless the immigration judge rotates the camera, an immigrant respondent cannot see his or her attorney and cannot see the Immigration and Customs Enforcement attorney in charge of their case. Throughout the more than 1,000 detained immigration hearings court observers attended, it was very rare for a judge to rotate a camera. Exceptions included when an immigration attorney requested the opportunity to speak with their client after a hearing and the immigration judge allowed this, or in a handful of instances when an immigration judge was moved by the number of family members who had come to the court for their loved one’s hearing and decided to show the immigrant who had come to support them.

# Who has an attorney in immigration hearings?

At their first hearing, most immigration judges give immigrant respondents a sheet of paper with contact information for free-of-charge or low-cost attorneys. This sheet of paper also appeared to be provided at the prisons and jails where immigrants are detained.

There are non-profit organizations in Cleveland who represent immigrants free of charge. One court observer attempted to call the numbers on the provided list and found that the information was out of date, and some of the nonprofits listed were no longer available. Furthermore, many of the hotlines on the list did not have interpreters available in the languages people looking for an attorney might need, which further complicates efforts to obtain an attorney.

Table 1:

Percent of Respondents Represented by an Attorney

JUDGE	ATTORNEY FOR MC HEARING	ATTORNEY FOR BOND HEARING
BROWN	69.0%	80.3%
HUNSUCKER	39.9%	77.0%
OWENS	35.6%	88.6%
SEPPANEN	62.1%	87.5%
WHIPPLE	48.9%	89.4%
<b>TOTAL</b>	<b>49.7%</b>	<b>83.8%</b>

**Some attorneys who represent immigrants for profit charge fees that are exorbitant relative to their client's incomes.** One court observer spoke to an immigration attorney who charged their client \$2,000 to file (unsuccessfully) for bond.

When people who are in deportation proceedings request time to find an attorney at their initial (Master Calendar, or MC) hearings, the immigration judges in the Cleveland court grant an average of 12 days and sometimes only three days to obtain representation. Finding an attorney in 12 days is very difficult for individuals in ICE detention. While being detained in prison or jail, individuals must frequently overcome language barriers, lack of community ties and lack of funds to obtain representation.



# What are bond hearings?

Immigrants in detention can request bond hearings. At the bond hearing, an immigration judge will determine whether the immigrant is eligible for release and will set a bond amount if they are. The bond is paid as a guarantee that the detainee will attend future hearings in court. If the individual attends all of the court hearings as required, the government will return the bond. If they do not show up in court, the individual will lose the bond money and may be returned to detention.

Table 2:

Number of observed bond hearings	JUDGE	OBSERVED BOND HEARINGS
	BROWN	75
	HUNSUCKER	125
	OWENS	132
	SEPPANEN	10
	WHIPPLE	98
	<b>TOTAL</b>	<b>440</b>

## Is bond the same as bail?

Bond is different from bail. Unlike the “bail” amounts set in criminal court, where a client has to post approximately 10% of the set amount to be released, immigrants have to pay 100% of set bond to be released from detention. For example, in a criminal court, a person with a bond of \$25,000 may be released after paying \$2,500 (10% of the total amount). An individual with a bond of \$25,000 in immigration court must pay \$25,000 to be released (100% of the amount). For this reason, some people who are granted bond are not able to leave detention in a prison or jail because the amount is too high for them to raise the required funds.

## What happens after a bond hearing?

There are three possible outcomes for a bond hearing: bond could be denied, granted, or the hearing could be postponed.

If an immigrant is **denied bond**, they will not have an option for being released from administrative detention in the prison or jail where they are held until their immigration proceedings reach a conclusion.

An immigrant may be **granted bond**, which means the immigration judge would set an amount in US dollars, which must be paid in full on behalf of the immigrant detainee for that person to be able to be released for the remainder of his or her hearings.

There is also the possibility that a bond hearing might be **postponed**. Common reasons for postponement included immigrants withdrawing their bond applications, uncertainty regarding the bond process, an inability to gather required documents or an immigration judge cancelling court that day.

**Table 3: Bond Hearing Outcomes**

JUDGE	BOND GRANTED	BOND DENIED	BOND POSTPONED
BROWN	68.0%	12.0%	20.0%
HUNSUCKER	59.2%	26.4%	14.4%
OWENS	63.6%	10.6%	25.8%
SEPPANEN	40.0%	30.0%	30.0%
WHIPPLE	57.1%	13.3%	29.6%
<b>TOTAL</b>	<b>61.1%</b>	<b>16.4%</b>	<b>22.5%</b>

# What is the average bond amount?

The minimum bond amount an immigration judge may impose by law is \$1,500.

In Cleveland immigration court, the average bond amount imposed was \$11,549 during the data collection period.

Table 4: Summary of Bond Amounts (in USD) for people granted bond

JUDGE	MEAN	RANGE	NUMBER OBSERVED
BROWN	6843	14500	51
HUNSUCKER	17061	66000	74
OWENS	11307	32000	83
SEPPANEN	14375	12500	4
WHIPPLE	8705	10000	56
ALL JUDGES (aggregated)	11549	69500	268

## CASE EXAMPLE 2

### The impact of excessive bond rates

Observers learned that setting bonds too high for people to have the hope of paying can leave people who hope to be released from detention and be reunited with loved ones feeling desperate and depressed.

During the court observation period, one court observer received an anonymous report from a prison staff member explaining that on a day when there were no observers in court, a man had become hopeless after being imposed a bond of over 60,000 USD with no way to pay the bond and attempted to take his own life in his prison cell.

Tables 5 and 6 show the summary statistics for bond amounts issued for people with or without lawyers.

Most immigrant respondents did not ask for bond hearings if they could not find an attorney. During the observation period, **only 10 people who attempted bond hearings without an attorney were granted bond, and the average bond amount they were given was around 3000 USD higher on average for people without an attorney.** This is likely because attorneys can negotiate lower bond rates for their clients.

**Table 5: Summary of bond amounts with an attorney**

JUDGE	MEAN	RANGE	NUMBER OBSERVED
BROWN	6826	14500	46
HUNSUCKER	16514	66000	71
OWENS	11438	32000	80
SEPPANEN	14375	12500	4
WHIPPLE	8705	10000	56
<b>OVERALL</b>	<b>11465</b>	<b>69500</b>	<b>257</b>

**Table 6: Summary of bond amounts without an attorney**

JUDGE	MEAN	RANGE	NUMBER OBSERVED
BROWN	7000	5000	5
HUNSUCKER	30000	30000	3
OWENS	8000	0	2
SEPPANEN	--	--	0
WHIPPLE	--	--	0
<b>ALL JUDGES</b>	<b>14100</b>	<b>45000</b>	<b>10</b>

# Accessibility and Respect in Cleveland immigration court

Detailed notes from court observers raised several concerns about the ability for people undergoing immigration proceedings to have meaningful access to the court.

Several observers reported specific instances in which a clerk behaved in an unprofessional manner, portraying bullying-type behaviors toward respondents. This behavior represents a threat to their 5th and 14th Amendment rights to meaningful access to court.

For example, several observers reported seeing the clerk rolling her eyes at multiple respondents, scoffing at their statements and frequently shaking her head at them during court proceedings. Such behavior struck respondents as disrespectful and unprofessional.

Observers also noted multiple occasions when judges would conduct “**group hearings,**” a practice that may violate due process rights and does not grant respondents meaningful access to the court.

For example, a bailiff in Judge Hunsucker’s courtroom entered and looked at the group of respondents on the TV screen and asked “Is this a four-pack?” before proceedings began. Group hearings were common in Judge Hunsucker’s courtroom, and respondents were often asked to respond in unison except when giving identifying information.

**Language barriers** were a frequently-observed issue in Cleveland Immigration Court. Observers documented that interpretation services made available in court settings are often woefully inadequate to the task of allowing respondents to comprehend their own hearings. During the observation period, it was not uncommon for an immigration judge to require someone who speaks a local dialect like Quiché, Chol, or Kekchi to work with a Spanish interpreter or someone who speaks Lingala or Wolof to work with a French interpreter to avoid having to go through the pain of finding an interpreter for those languages. Observers noted that immigration judges frequently asked immigration attorneys to have their clients “waive the right to full interpretation.”

For example, in an interaction with a respondent who had just turned 18, Judge Brown asked the respondent if he spoke “a bit of Spanish?” The respondent replied “Yes,” and Judge Brown asked “Is Ishil your first language?” The respondent affirmed, and Judge Brown ordered the court to continue in Spanish. A similar demand was made on a respondent who was in the 9th grade.

Access to interpreters via teleconference was often not reliable. Hearings were sometimes rescheduled to find an appropriate interpreter, resulting in an extension of detention for some respondents.



## Refusing someone without an attorney access to his own asylum application

The individual stated that English was his best language, but he had noticeable difficulty speaking English and understanding Judge Whipple. He did not seem aware that he had the right to ask for an interpreter. He explained that he did not have money to pay an attorney and stated this was why he had not sought one. He arrived in court with a handwritten asylum application he had prepared on his own.

After the respondent filed his application with the court, Judge Whipple noted that he had several mistakes in the application, including missing pages 6–8 and lacking a signature. Judge Whipple explained the issues with his application and asked him to find the missing pages and complete them and file them with the court. The respondent nodded and then stated that what he had given the judge was his only copy and asked if it would be possible for him to see the submitted application. The judge said that he was not sure if that was allowed and then asked his clerk, Raquel, if this would be permitted.

Raquel, who had been scoffing, smirking and rolling her eyes at the respondent during the duration of these interactions, told the judge that they cannot allow respondents to review their own files and that only attorneys can do it for them, explaining that he would need to file a Freedom of Information Act lawsuit to access his own asylum application.

This interaction worried observers because it appeared to represent a direct attack on this individual's meaningful access to the court and appears to violate the Immigration Court Practice Manual (see Chapter 12, page 175).

## Children in Cleveland immigration court

Court observers were surprised to find instances when children who were too young to read and write fluidly or take public transportation, were ordered deported for failing to appear in court, even on school days. For example, in April of 2019, an immigration judge proceeded on the trial of a child and ordered the 6-year old child be deported to Guatemala because he had not shown up in court.

# Our Recommendations

Immigration court observers reflected often on the ideas of due process and justice. They observed a deep disconnect between these fundamental rights during hearings, and many were troubled by the serious barriers to justice outlined throughout this report. Even when policies and procedures were strictly followed, the final result felt far away from justice. These are not issues unique to Cleveland's immigration court; the system itself is deeply flawed.

**Immigration policy must adhere to basic international human rights standards by supporting dignity, doing justice and operating fairly. To meet these standards, the Cleveland Immigration Working Group Court Observers recommend the following changes in the immigration court system:**

- Standardized bond of no more than \$1,500 for civil detained cases and no more than \$15,000 for cases with criminal charges
- Move Immigration Court from under the Executive branch and create another Federal Court under the Judicial branch with the same due process procedures as other federal courts, including right to a court-appointed attorney and rights to due process and speedy trials
- Ban the practice of group hearings
- Require full evidentiary hearing before denials of asylum claims
- Require full-time interpreters on staff and in-house
- Translate all court documents into the defendants' primary languages
- Require all detainees to be given their rights and explanations of court procedures upon detention
- Waive all in-person hearings for minors after the initial hearing and require only the attorney to attend
- Appoint an Independent Citizen Board to oversee the operations of each immigration court with the power and authority to remove appointed judges
- Create a two-year probation period for newly-appointed judges with six-month performance reviews by the Independent Citizen Board
- Install up-to-date, state-of-the-art video conferencing equipment for detained cases

# Appendix A

## Immigration Court Data Collection Sheet

Immigration Working Group CLE IMMIGRATION COURT DATA COLLECTION		
Date:	Judge:	Court Observer:
General Information		
Respondent Name:	Respondent's A-Number:	
Respondent's country of origin:	Respondent's Primary language:	
Holding Location:	Interpreter Used? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Length of detention:	If yes, language used:	
Respondent handcuffed? <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> In person <input type="checkbox"/> Phone <input type="checkbox"/> Video	
Initial Removal Hearing ("Master Calendar")		
<i>ICE Attorney Information:</i>	Does respondent have an attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name:	If yes, name:	
Files present: <input type="checkbox"/> Yes <input type="checkbox"/> No	If no, wants time to hire an attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Forms of relief for which respondent may apply or be eligible: <input type="checkbox"/> Asylum <input type="checkbox"/> Cancellation of Removal <input type="checkbox"/> Withholding of Removal <input type="checkbox"/> Voluntary Departure <input type="checkbox"/> Not eligible for relief		
Outcome of hearing: <input type="checkbox"/> Order of Removal made <input type="checkbox"/> Respondent granted another hearing. Date if given:		
Bond/Custody Hearing		
<i>ICE Attorney Information:</i>	Does respondent have an attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name: (same as above)	If yes, name:	
Files present: (same as above)	If no, wants time to hire an attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Outcome of hearing: <input type="checkbox"/> Bond granted. Amount: \$ _____ <input type="checkbox"/> Bond agreed on between attorneys. <input type="checkbox"/> Bond denied. <input type="checkbox"/> Bond decision made by judge. <input type="checkbox"/> Bond hearing postponed or rescheduled. Next hearing date:		
Individual Hearing		
<i>ICE Attorney Information:</i>	Does respondent have an attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name: (same as above)	If yes, name:	
Files present: (same as above)	If no, wants time to hire an attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Outcome of hearing:		
Additional Notes & Observations:		
Did the Government lose the respondent's ID? <input type="checkbox"/> Yes <input type="checkbox"/> No		