

United States Court of Appeals for the Tenth Circuit

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Christopher M. Wolpert
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All Counsel Scheduled for Oral Argument

RE: Instructions for Cases Set for Oral Argument

Dear Counsel:

In November 2020, the United States Court of Appeals for the Tenth Circuit will hear oral arguments remotely via video conference using Zoom for Government. The court's Zoom oral argument guide is included with this notice. In addition, the guide and all required oral argument forms can be found at <https://www.ca10.uscourts.gov/clerk/oral-argument-forms>.

Arguing counsel must electronically file the following form(s) within 10 days of the date this notice is filed. Arguing counsel who have not previously entered an appearance must do so prior to filing the required form(s).

Calendar Acknowledgment Form: Only arguing counsel must file this form. Counsel for an amicus curiae may not argue without permission of the court; amicus counsel need not file an acknowledgment form unless and until s/he is granted permission to participate in argument.

Custody Status Questionnaire: This form must be filed by counsel for the defendant in a direct criminal appeal (including interlocutory appeals, regardless of which party filed the appeal) or by counsel for a petitioner in a habeas corpus or immigration appeal, or in any appeal where the plaintiff, defendant or petitioner is in custody.

The required form(s) must be filed in all cases set for argument, including those that appear on the calendar as submitted on the briefs. Motions to waive or postpone oral argument must be filed well in advance. *See* 10th Cir. R. 34.1(A)(2) and (3). Unless the court orders submission on the briefs or postponement, attendance at oral argument is required. Please contact the Calendar Team with any questions: 303-335-2708 or 10th_Circuit_Calteam@ca10.uscourts.gov.



CHRISTOPHER M. WOLPERT, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT



Guide for Participating in Video Oral Arguments Using Zoom for Government

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OVERVIEW

During the COVID-19 pandemic, the Tenth Circuit Court of Appeals will hear oral arguments remotely via video conferencing using Zoom for Government. Arguing attorneys are strongly encouraged to review this guide and other available resources to familiarize themselves with Zoom well in advance of oral arguments.

IMPORTANT: Arguing counsel **must download and use the Zoom app** to participate in oral arguments. **Joining by browser will not allow arguing counsel to view all three judges and the timer.**

This guide summarizes the basics of how to use Zoom to participate in an oral argument session, and how the oral argument session will proceed. The guide addresses the following topics:

- ❖ How to join a Zoom session, and what to expect during your session;
- ❖ How Zoom’s “waiting room” function works;
- ❖ How to operate the in-session controls;
- ❖ How to switch from Zoom’s “Speaker View” to “Gallery View”;
- ❖ Hiding non-video participants during your argument (to see only the judges and opposing counsel);
- ❖ How to set a virtual background; and
- ❖ How to test your system and respond to technical difficulties during an argument.

We hope that the guide will assist you to feel at ease using this videoconferencing platform and enable you to participate in oral arguments as you would in the courtroom.

COURT PROCEDURES DURING ZOOM SESSIONS

Zoom refers to its video conferences as Zoom Meetings, but for the court's purposes this guide refers to it as a "Zoom session" or "Zoom argument session." The Zoom session is a court proceeding that will proceed similarly to an in-person oral argument. Counsel must join the Zoom session at least 45 minutes before the scheduled argument time to check in, listen to announcements, and ask any questions they may have.

The cases will be argued in the order they appear on the calendar. Each side will have fifteen minutes to argue. A countdown timer will be displayed via Zoom. Appellant's counsel may reserve a portion of their 15 minutes for rebuttal by stopping their principal argument with time remaining on the clock and seeking leave of court to reserve the remaining time. Time management is counsel's responsibility. All participants shall observe the court's rules, practices, and etiquette as if arguing in person at the courthouse. Audio of the arguments will be recorded, posted to the court's website, and live-streamed to the public on the court's YouTube channel:

<https://www.youtube.com/channel/UCz4oP87ziTjb7WpRwIGZf0g>

Please note:

- ❖ While only arguing counsel, court personnel, and the judges hearing argument may log into the Zoom session, the argument sessions are live and public (via the aforementioned YouTube audio streaming). Anything said during the proceeding will be heard by observers.
- ❖ The argument sessions will be recorded by the court and posted (audio only) to the court's website. No other recording is allowed.
- ❖ Courtroom decorum rules apply. Participants should be dressed appropriately, and must act as they would in the courtroom.
- ❖ Act naturally and **make eye contact with your camera**. The judges will be able to see and hear you just as if you were presenting your argument in person.
- ❖ Use your normal voice. Unless requested by the court, there is no need to speak more loudly or more slowly than you would in a normal courtroom setting.
- ❖ Avoid exaggerated and unnecessary gestures or movement. Remain still and centered in camera.
- ❖ Dress conservatively. Avoid white, vivid colors, and bold patterns.
- ❖ Plan to present your argument from a quiet space that will be free of background noise and interruptions.

PRIOR TO DATE OF ARGUMENT

Verify You Have Received the Zoom Meeting ID and Password

Formal notice of this court's Zoom argument sessions will be emailed to arguing attorneys using the email addresses on file with the court. If, due to COVID-19, you are using an email address other than the one that appears on the docket in your appeal, you must immediately notify the Tenth Circuit Calendar Team at 303-335-2708 or 10th_Circuit_Calteam@ca10.uscourts.gov.

The week before oral argument, the court will use the aforementioned email addresses to transmit Meeting IDs and Passwords to arguing attorneys. **You may not share the Meeting ID or Password; only arguing attorneys may sign into the Zoom session.** Clients, co-counsel, and other interested parties may listen in live via the YouTube audio stream.

Verify the Time of Your Oral Argument

Arguments will be heard in the order the cases are listed on the court calendar. Attorneys participating in an oral argument must log in to the Zoom session 45 minutes prior to the start of oral arguments. For example, counsel must join the Zoom session by 8:15 a.m. for arguments set to begin at 9:00 a.m. All times referenced herein and in oral-argument-related communications are **Mountain time**.

Downloading and Testing Zoom

There are several options for joining a Zoom session, depending on the device you are using. Prior to the date of argument, you should determine what device you will use for the Zoom session. You do not need to pay to use Zoom to attend a court session. **You also do not need to create an account (free or paid¹) to use Zoom, but you may do so if you wish.**

Downloading Zoom. The first step in participating in a Zoom argument session is to ensure that you have downloaded Zoom to the device that you intend to use for the Zoom argument session. You can download Zoom at <https://zoom.us/>. The software is free and can be installed on your desktop, laptop or notebook computer. Zoom can also be downloaded on smartphones, iPads, and tablets from Google Play Store (for Android

¹ A free Zoom account allows a party to host a multi-party meeting for up to 40 minutes. When you join a hearing by Zoom you are doing so as a participant (not as a host) and your participation in the hearing is not limited to 40 minutes per session.

devices) or from App Store (for iOS devices). For further information on downloading Zoom, please go to <https://support.zoom.us/hc/en-us/articles/201362233>.

The system requirements² for use of Zoom are:

- a) An internet connection;
- b) Speakers and a microphone; and
- c) A camera.

If you do not have a video webcam on a device, you can participate in the Zoom session via audio only. If you participate via audio only using a web browser on a computer, tablet, or phone, the court will be able to hear (but not see) you, and you will be able to hear and see the court, opposing counsel, and the timer. If you join the Zoom session using only a telephone, the court will be able to hear (but not see) you; you will be able to hear (but not see) the other participants; and you will not be able to see the timer. Joining via telephone is not recommended because you will not be able to see the timer; even if you do not have a camera, join via a computer or other device so you can see the timer and the other participants.

Testing Your Zoom Connection

Arguing attorneys are strongly encouraged to test the Zoom display name function, virtual background settings, and in-session controls in advance of argument.

To familiarize yourself with how to join a meeting, you may join a test meeting at: <https://zoom.us/test>. For more information on using Zoom to join a meeting, please go to <https://support.zoom.us/hc/en-us/articles/201362193-How-Do-I-Join-A-Meeting>. Zoom also hosts free and interactive live training webinars daily on joining a meeting, which can be accessed at <https://support.zoom.us/hc/en-us/articles/360029527911>.

Zoom Practice Sessions

Should you wish to schedule a practice session prior to your oral arguments, please contact the Tenth Circuit Calendar Team at 303-335-2708 or 10th_Circuit_Calteam@ca10.uscourts.gov. Any such practice sessions must be scheduled in advance, and completed at least two weeks prior to the date of argument.

² The detailed system requirements can be found at: <https://support.zoom.us/hc/en-us/articles/201362023-System-Requirements-for-PC-Mac-and-Linux>).

VIRTUAL BACKGROUND

Zoom allows you the option of using a virtual background instead of making your surroundings visible to other session participants. You may use a virtual background, but it is not required. Some devices may not be compatible with virtual background.

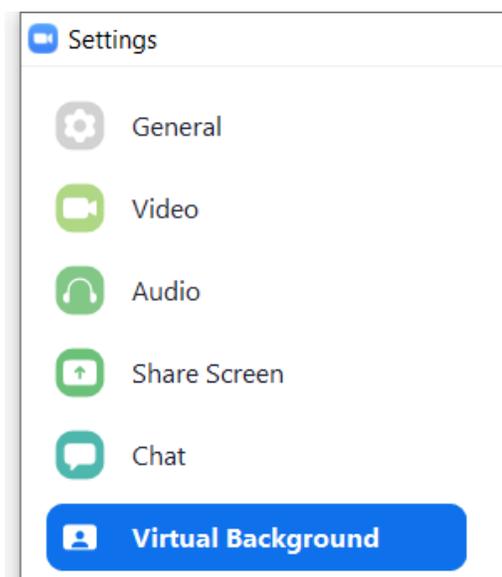
When using the virtual background some portion of your head or shoulders may disappear or appear “glitchy” if you are too far away from your device’s camera. To avoid this, you should observe yourself using the virtual background; move closer to the device if necessary; and avoid gesturing during your argument. Please also verify that the “I have a green screen” box is **not** checked unless you are using a green screen.

If you plan to use the virtual background feature, please test it in advance. If you opt not to use a virtual background, consider your surroundings when selecting a place from which to join the session. Backlighting and cluttered backgrounds can be distracting. Avoid places where sounds from surrounding activity will be picked up on your microphone. For either setting, it is best if you have some lighting (e.g., a lamp) in front of you, and if you are not in a shadow.

In the **Zoom desktop client**, click **Settings** (or, if using the **Zoom App on a mobile device**, click the “**More**” button).



Select **Virtual Background**. Choose one of the images provided to use as your background, or choose a custom image by clicking + and **Add Image**.



JOINING AND PARTICIPATING IN A ZOOM SESSION

Join the Zoom Session at Least 45 Minutes Before Arguments Begin

At least 45 minutes prior to the designated hearing time, sign into the Zoom session. The court's Zoom email invitations will include (1) a meeting ID and a password that are specific to each oral argument session (i.e., if you are arguing on multiple days, you will receive multiple meeting IDs and passwords via separate emails); (2) a link to join the session from a computer or mobile device; and (3) dial-in numbers to join the session via phone. Whether you join via the link or the dial-in number, you must enter the Meeting ID and Password when prompted to do so.

If prompted, click "Join Audio by Computer" to connect your computer's speakers and microphone to the Zoom Meeting. You should also click on "Join with Video" if prompted. Do **not** select "Do not connect to audio." Do **not** select "Turn off my video."

After you sign in, you will automatically enter a virtual "waiting room", where you will see a welcome screen. **Keep the welcome screen open.** While you are in the waiting room, you cannot communicate with other parties or court personnel. The courtroom deputy will be able to see that you have logged in and are in the waiting room.

After all arguing counsel have joined the Zoom session, the courtroom deputy will bring everyone into the argument session to make pre-argument announcements and answer any questions counsel may have. All arguing counsel will then be placed back into the waiting room until the court is ready to begin arguments.

When the court is ready to begin hearing arguments, all arguing counsel will be readmitted to the argument session. At that time, all counsel must mute their microphones and disable their cameras until their case is called. When each case is called, the courtroom deputy will instruct the attorneys presenting argument in that case to unmute their microphones and enable their cameras. Before each argument commences, the courtroom deputy will confirm that arguing counsel can be seen and heard in the Zoom session.

Note: When your case is being heard, Zoom will work best if you (1) switch from Speaker view to Gallery View (see Page 12, below); and (2) hide non-video participants (Settings → Video → Meetings → Select Hide Non-Video Participants).

Timer

The timer will begin when counsel begins speaking. Appellant's counsel may reserve a portion of their 15 minutes for rebuttal by stopping their principal argument with time remaining on the clock and seeking leave of court to reserve the remaining time. Time management is counsel's responsibility. When there are three minutes of total time remaining, the timer will switch color from green to yellow. When counsel's time has expired, the timer will change color from yellow to red, and start counting up.

Troubleshooting During Oral Arguments

If you can see and hear the panel but they cannot hear you, your microphone might be muted. If you cannot see or hear the panel, or have a frozen connection, you should disconnect from the Zoom session and log back in. The courtroom deputy will readmit you to the argument. If you still cannot see or hear, see the "Technical Problems" section at the end of this guide.

Best Practices During Arguments

To minimize the risk of distractions, silence your cellphone and any other devices that may make noise.

Please also mute any other devices that may create feedback, including the live audio stream from the court's YouTube channel.

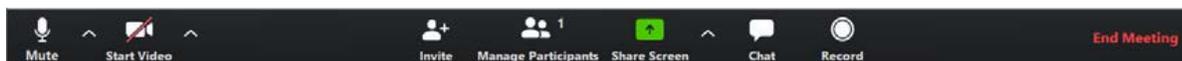
While opposing counsel is presenting argument, mute your microphone in Zoom. The process for muting yourself is discussed below. If you do not mute yourself, the courtroom deputy may do so.

When your case is being heard, Zoom will work best if you (1) switch from Speaker view to Gallery View (see Page 12, below); and (2) hide non-video participants (Settings → Video → Meetings → Select Hide Non-Video Participants).

IN-SESSION ZOOM CONTROLS

There are a series of controls that appear on a bar at the bottom of your screen during a Zoom session. The courtroom deputy may disable some of these controls during the argument session.

When you launch your Zoom session, you should see a bar along the bottom of your screen containing several icons. If you are using a free account, you should see the following icons:



If you are using a premium account, you should see the following icons:



From here, you can manage several useful functions:

Mute

Mute prevents your microphone from transmitting audio to the others in the session. You are responsible for ensuring that your microphone is muted when you are not presenting argument.

- Selecting ^ beside the mute button opens a menu for audio settings.

Start Video/Stop Video

Pressing “Start Video” will enable your camera and allow others in the session to see you. Pressing “Stop Video” disables your camera and prevents other participants from seeing you.

- You can choose in your settings whether your default is to start with or without video.
- Selecting ^ beside the video button opens a menu for camera settings.

Leave Meeting

When all arguments in a case have been completed, you can select “Leave” or “Leave Meeting” to exit the session. However, we recommend waiting for the courtroom deputy to end the session, rather than leaving yourself. The courtroom deputy will remove you from the meeting after the arguments in your case have concluded.

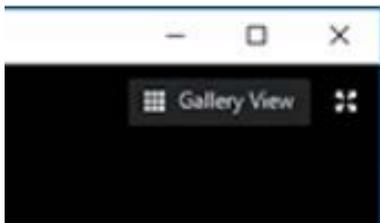
Switching from Speaker View to Gallery View

Zoom provides two options for how you view the session: Speaker View or Gallery View. Speaker view displays the person presently speaking in a large panel, and the remaining participants in small icons along the top of the screen. Gallery view displays all participants at the same time in the same size.

We recommend you set your display to **Gallery View**, since it allows you to view all participants and the courtroom timer, and to pick up on nonverbal cues such as a judge who intends to ask a question, which you might otherwise miss when in Speaker View.

Switching View on the Zoom Desktop Client

- a) Hover your cursor at the upper right corner of the video screen. An icon should appear indicating whether you are on Speaker View or Gallery View. Click the icon to change your viewing layout.



- b) Alternatively, you may use the keyboard shortcuts:
 - i. **Alt + F1** for **Speaker View**
 - ii. **Alt + F2** for **Gallery View**

Switching View on the Zoom Mobile App on a Phone or Mobile Device

Your default setting will be Speaker View. From your default Speaker View screen, swipe left to display Gallery View. Mobile Gallery View displays up to 4 participants at a time. You can view the remaining participants by continuing to swipe left.

Hiding Non-Video Participants

Click on the Settings icon. Under Video, select Hide Non-Video Participants.



TECHNICAL PROBLEMS DURING ORAL ARGUMENT

If there is a technical problem with the Zoom session or any participant (e.g., a participant inadvertently drops out or is frozen due to a poor internet connection), the courtroom deputy may announce that there is a problem with the meeting and may instruct everyone on the call that it is being suspended momentarily and that participants will be moved to the waiting room until the problem is resolved.

If you happen to drop out of the session or your video feed freezes, you should immediately follow the steps to log back into the session (i.e., click on the Zoom link and enter the Meeting ID and password). The courtroom deputy will be alerted when you reenter the waiting room, and s/he will return you to the argument. If you have difficulty rejoining, please contact your IT personnel for support.