



Immigration Removal Adjudication

Committee on Adjudication

Proposed Recommendation | June 14-15, 2012

(Original Proposed Recommendation With Cross References to Immigration Removal Adjudication Report)

Note: Parenthetical numbers in bold and Times Roman Typeface, e.g., (31) indicate the initial page number of the corresponding portion of the *Enhancing Quality and Timeliness in Immigration Removal Adjudication* report (dated June 7, 2012).

1 The U.S. immigration removal adjudication agencies and processes have been the
2 objects of critiques by the popular press, organizations of various types, legal scholars,
3 advocates, U.S. courts of appeals judges, immigration judges, Board of Immigration Appeals
4 members and the Government Accountability Office. Critics have noted how the current
5 immigration adjudication system fails to meet national expectations of fairness and
6 effectiveness. One of the biggest challenges identified in the adjudication of immigration
7 removal cases is the backlog of pending proceedings and the limited resources to deal with the
8 caseload. A study reports that the number of cases pending before immigration courts within
9 the U.S. Department of Justice’s Executive Office for Immigration Review (“EOIR”) recently
10 reached an all-time high of more than 300,000 cases and that the average time these cases
11 have been pending is 519 days.¹ A February 2010 study by the American Bar Association’s
12 Commission on Immigration reports that the number of cases is “overwhelming” the resources
13 that have been dedicated to resolving them.² Another challenge identified is the lack of

¹ Transactional Records Access Clearinghouse, *Comprehensive, independent and nonpartisan information about U.S. federal immigration enforcement*, Syracuse Univ., available at http://trac.syr.edu/phptools/immigration/court_backlog/.

² American Bar Association Commission on Immigration, *Reforming the Immigration System, Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, 1-49 (2010) available at http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf.



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14 adequate representation in removal proceedings, which can have a host of negative
15 repercussions, including delays, questionable fairness, increased cost of adjudicating cases, and
16 risk of abuse and exploitation. More than half of respondents in immigration removal
17 proceedings and 84 percent of detained respondents are not represented.³

18 The numerous studies examining immigration removal adjudication have focused on the
19 two agencies principally involved: EOIR and the U.S. Department of Homeland Security (“DHS”),
20 specifically two of its components: the United States Citizenship and Immigration Services
21 (“USCIS”) and Immigration and Customs Enforcement (“ICE”). Prior studies about EOIR have
22 noted the limited resources available to the agency and called for more resources to hire more
23 immigration judges and support staff and thus ease the backlog of cases; criticized immigration
24 judge hiring standards and procedures, and recommended enhanced orientation, continuing
25 education, and performance monitoring.

26 Consultants for the Administrative Conference of the United States conducted a
27 comprehensive and detailed study of potential improvements in immigration removal
28 adjudication.⁴ Following the study and consistent with the Conference’s statutory mandate of
29 improving the regulatory and adjudicatory process, the Conference issues this
30 Recommendation directed at reducing the caseload backlog, increasing and improving
31 representation, and making the immigration adjudication system more modern, functional,
32 effective, transparent and fair. This Recommendation urges a substantial number of
33 improvements in immigration removal adjudication procedures, but does not address
34 substantive immigration reform. A pervading theme of this Recommendation is enhancing the

³ *Id.*

⁴ See Lenni B. Benson and Russell R. Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* (Draft Report June 7, 2012) available at <http://www.acus.gov/wp-content/uploads/downloads/2012/06/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf>.



35 immigration courts' ability to dispose of cases fairly and efficiently. Many of the reforms are
36 aimed at structuring the pre-hearing process to allow more time for immigration judges to give
37 complex cases adequate consideration. This Recommendation is directed at EOIR and DHS
38 components' USCIS and ICE. A few parts of this Recommendation would also impact the
39 practices of United States Customs and Border Protection ("CBP"), another component of DHS.

RECOMMENDATION

40 PART I. Immigration Court Management and Tools For Case Management

41 **A. Recommendations to EOIR Regarding Immigration Court Resources, Monitoring Court** 42 **Performance and Assessing Court Workload**

43 1. To encourage the enhancement of resources, working within and through the U.S.
44 Department of Justice ("DOJ"), the DOJ's Executive Office for Immigration Review
45 ("EOIR") should:

46 a. Continue to seek appropriations beyond current services levels but also plan for
47 changes that will not require new resources; **(31)**

48 b. Make the case to Congress that funding legal representation for respondents
49 (*i.e.*, non-citizens in removal proceedings), especially those in detention, will
50 produce efficiencies and net cost savings **(58)**; and

51 c. Continue to give high priority for any available funds for EOIR's Legal Orientation
52 Program ("LOP") and other initiatives of EOIR's Office of Legal Access Programs,
53 which recruit non-profit organizations to provide basic legal briefings to detained
54 respondents and seek to attract pro bono legal providers to represent these
55 individuals. **(59)**;

56 2. To monitor immigration court performance, EOIR should:



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- 57 a. Continue its assessment of the adaptability of performance measures used in
58 other court systems; **(108, re §§ a-d)**;
- 59 b. Continue to include rank-and-file immigration judges and U.S. Department of
60 Homeland Security (“DHS”) agencies in the assessment of the court’s
61 performance;
- 62 c. Continue to incorporate meaningful public participation in its assessment; and
- 63 d. Publicize the results of its assessment.
- 64 3. To refine its information about immigration court workload, EOIR should:
- 65 a. Explore case weighting methods used in other high volume court systems to
66 determine the methods’ utility in assessing the relative need for additional
67 immigration judges and allowing more accurate monitoring and analysis of
68 immigration court workload; **(33)**;
- 69 b. Expand its data collection field, upon introduction of electronic filing or other
70 modification of the data collection system, to provide a record of the sources for
71 each Notice to Appear form (“NTA”) filed in immigration courts; **(36)**;
- 72 c. Continue its evaluation of adjournment code data, as an aid to system-wide
73 analysis of immigration court case management practices and devise codes that
74 reflect the multiplicity of reasons for an adjournment; **(82)**;
- 75 d. Evaluate the agency’s coding scheme to consider allowing judges or court
76 administrators to identify what the agency regulations call “pre-hearing
77 conferences,” sometimes known as “status conferences;” **(68, 74)**; and
- 78 e. Authorize, as appropriate, a separate docket in individual courts for cases
79 awaiting biometric results with a special coding for these cases to allow later



80 measurement of the degree to which such security checks are solely responsible
81 for the delays. (75);

82 **B. Recommendations to EOIR Regarding Immigration Court Management Structure and**
83 **Court Workforce**

84 4. EOIR should consider assembling a working group of immigration judges and others
85 familiar with court management structures to assist in its ongoing evaluation of
86 alternatives to the current Assistant Chief Immigration Judge structure used by the
87 agency. (111);

88 5. To increase the immigration court workforce, EOIR should: (32);

89 a. Consider the use of temporary immigration judges where permitted by its
90 regulations. If temporary immigration judges are used, EOIR should use
91 transparent procedures to select such judges and usual procedures for
92 monitoring judges' performance;

93 b. Consider the National Association of Immigration Law Judges' ("NAIJ") proposal
94 for instituting senior status (through part-time reemployment or independent
95 contract work) for retired immigration judges;⁵ and

96 c. Consider using appropriate government employees as temporary immigration
97 court law clerks.

⁵ See *Improving Efficiency and Ensuring Justice in the Immigration Court System: Hearing Before the S. Comm. on the Judiciary*, 112th Cong. (2011) (statement of NAIJ), available at <http://dl.dropbox.com/u/27924754/NAIJ%20Written%20Statement%20for%20Senate%20Judiciary%20Cmte%205-18-11%20FINAL.pdf> (citing the National Defense Authorization Act for FY 2010, Public Law 111-84 where Congress facilitated part-time reemployment of Federal employees retired under CSRS and FERS on a limited basis, with receipt of both annuity and salary).



- 98 6. To promote transparency about hiring practices within the agency and consistent with
99 any statutory restrictions to protect privacy, EOIR should periodically publish summary
100 and comparative data on immigration judges, Board of Immigration Appeals members,
101 and support staff as well as summary information on judges' prior employment.⁶ **(105)**;
- 102 7. EOIR should expand its webpage entitled "Immigration Judge Conduct and
103 Professionalism" that discusses disciplinary action to include an explanation of why the
104 agency is barred by statute from identifying judges upon whom it has imposed formal
105 disciplinary action. **(110)**;
- 106 8. EOIR should consider incorporating elements of the American Bar Association's and the
107 Institute for the Advancement of the American Legal System's Judicial Performance
108 Evaluation models into its performance evaluation process, including the use of a
109 separate body to conduct agency-wide reviews.⁷ **(106)**;
- 110 **C. Recommendations to EOIR Regarding Enhancing the Use of Status Conferences,**
111 **Administrative Closures and Stipulated Removals**
- 112 9. To enhance the utility of status conferences, EOIR should: **(68)**;
- 113 a. Assemble a working group to examine immigration judges' perceptions of the
114 utility, costs and benefits of such conferences;

⁶ Some examples of the types of data that may be published include: year of law school graduation, graduate education, languages spoken, past employment with DHS, past employment representing respondents in immigration cases, military experience, gender and race/ethnicity composition.

⁷ See Institute for the Advancement of the American Legal System, *Quality Judges Initiative*, U. Denv., available at <http://www.du.edu/legalinstitute/jpe.html> (providing Judicial Performance Evaluation resources); American Bar Association, *Black Letter Guidelines for the Evaluation of Judicial Performance (2005)*, available at http://www.abanet.org/jd/lawyersconf/pdf/jpec_final.pdf (providing JPE resources).



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- 115 b. Consider a pilot project to evaluate the effectiveness and feasibility of
116 mandatory pre-hearing conferences to be convened in specified categories of
117 cases;
- 118 c. Evaluate situations in which the judge should order the trial attorney to produce
119 essential records from the respondent’s file;
- 120 d. Evaluate the use of EOIR’s Form-55⁸ and consider creating a new form (similar to
121 scheduling orders used in other litigation contexts); and
- 122 e. Recommend procedures for stipulations by represented parties.
- 123 10. To clarify the proper use of techniques for docket control in immigration removal
124 adjudication cases, EOIR should: **(74)**;
- 125 a. Amend the Office of the Chief Immigration Judge’s (“OCIJ”) Practice Manual to
126 specifically define “Motions for Administrative Closure;” and
- 127 b. Amend appropriate regulations so that once a respondent has formally admitted
128 or responded to the charges and allegations in an NTA, the government’s ability
129 to amend the charges and allegations may be considered by the immigration
130 judge in the exercise of his or her discretion.
- 131 11. EOIR should expand its review of stipulated removals by considering a pilot project to
132 systematically test the utility of stipulated removal orders (provided that respondents
133 have been counseled by independent attorneys) as a mechanism to (a) reduce
134 detention time, (b) allow judges to focus on contested cases, and (c) assess whether and
135 when the use of stipulated removals might diminish due process protections. **(79)**;

⁸ See “Record of Master Calendar Form” in “Tools for the IJ” available at <http://www.justice.gov/eoir/vll/benchbook/index.html>.



136 12. In jurisdictions where DHS routinely seeks stipulated removal orders and asks for a
137 waiver of the respondent's appearance, EOIR should consider designing a random
138 selection procedure where personal appearance is not waived and the respondent is
139 brought to the immigration court to ensure that the waivers were knowing and
140 voluntary. If undertaking such a project, EOIR should encourage one or more advocacy
141 organizations to prepare a video recording (with subtitles or dubbing in a number of
142 languages) that explains the respondent's removal proceedings, general eligibility for
143 relief, and the possibility of requesting a stipulated order of removal should the
144 respondent wish to waive both the hearing and any application for relief including the
145 privilege of voluntary departure. (79);

146 **D. Recommendation to EOIR and DHS Regarding the BIA**

147 13. EOIR should finalize its 2008 proposed regulations to allow greater flexibility in
148 establishing three-member panels for the Board of Immigration Appeals ("BIA"). (103);

149 **PART II. Immigration Removal Adjudication Cases and Asylum Cases**

150 **A. Recommendations to EOIR Regarding Prosecution Arrangements and the**
151 **Responsibilities of Trial Counsel**

152 14. EOIR should not oppose unit prosecution, which DHS's Immigration and Customs
153 Enforcement ("ICE") Chief Counsel has devised for prosecution in some immigration
154 courts.⁹ (77);

155 15. EOIR should consider providing immigration judges with additional guidance directed at
156 ensuring that trial counsel are prepared and responsible for necessary actions that the
157 parties must complete between hearings. Specifically, EOIR should consider: (77)

⁹ The term "unit prosecution," also sometimes known as "vertical prosecution," is used in this Recommendation to refer to a practice used in some immigration courts, whereby the ICE Chief Counsel organizes ICE trial attorneys into teams and then assigns the teams to cover the dockets of specific judges.



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- 158 a. Amending the OCIJ's Practice Manual to explicitly include best practices for the
159 activities of trial counsel in immigration removal proceedings;
- 160 b. Instructing judges to document, in the record, the responsibilities, commitments,
161 actions and omissions of trial counsel in the same case; and
- 162 c. Clarifying the authority for judges to make conditional decisions on applications
163 for relief where trial counsel has not provided necessary information.

164 **B. Recommendations to EOIR Regarding Representation**

- 165 16. To increase the availability of competent representation for respondents, EOIR should:
- 166 a. Undertake a more intensive assessment of the paraprofessional programs that
167 provide legal representation and the accreditation process for such programs;
168 **(61 re §§ a and b)**
- 169 b. Continue its assessment of the accuracy and usefulness of the pro bono
170 representation lists provided at immigration courts and on the agency's website;
171 and
- 172 c. Develop a national pro bono training curriculum, tailored to detention and non-
173 detention settings: **(62)**
- 174 i. The training curriculum should be developed in consultation with groups
175 that are encouraging pro bono representation.
- 176 ii. The training curriculum should be offered systematically and in
177 partnership with educational, CLE and/or non-profit providers.
- 178 17. To enhance the guidance available to legal practitioners and pro se respondents, EOIR
179 should: **(67)**



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- 180 a. Work with a pro bono organization to develop materials that explain the legal
181 terms and concepts within the OCIJ Practice Manual;
- 182 b. Share supplemental instructions developed by individual immigration courts or
183 judges to aid the parties in preparing submissions to the immigration court; and
- 184 c. Evaluate the cost and utility of developing access to electronically-available
185 information in immigration court waiting rooms or similar spaces so that the
186 respondents can access the court website and find instructional materials.
- 187 18. To enhance the number and value of know-your-rights (“KYR”) presentations given to
188 detained respondents, EOIR should: **(59)**
- 189 a. Ensure that KYR presentations are made sufficiently in advance of the initial
190 master calendar hearings to allow adequate time for detained individuals to
191 consider and evaluate the presentation information (to the extent consistent
192 with DHS requirements for KYR providers);
- 193 b. Consider giving LOP providers electronic access to the court dockets in the same
194 manner as it is currently provided to DHS attorneys representing the
195 government in cases (with appropriate safeguards for confidentiality and
196 national security interests); and
- 197 c. Encourage local EOIR officials to obtain from detention officers aggregate data
198 about new detainees (such as, where possible, lists of new detainees, their
199 country of origin, and language requirements) at the earliest feasible stage for
200 both the immigration courts and LOP providers.
- 201 19. EOIR should study and develop the circumstances where the use of limited appearances,
202 (the process by which counsel represent a respondent in one or more phases of the
203 litigation but not necessarily for its entirety), is appropriate and in accordance with



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204 existing law. After further study, EOIR should consider taking appropriate action such as:

205 **(66)**

206 a. Modifying appropriate and underlying regulations as necessary;

207 b. Issuing an OPPM entry to explain to immigration judges the circumstances in
208 which they may wish to permit limited appearances and the necessary warnings
209 and conditions they should establish; and

210 c. Amending the OCIJ Practice Manual to reflect this modified policy.

211 20. EOIR should consider whether pro se law clerk offices would save costs, enhance
212 fairness, and improve efficiency. **(66)**

213 21. To encourage improvement in the performance of attorneys who appear in the
214 immigration court, EOIR should:

215 a. Continue its efforts to implement the statutory grant of immigration judge
216 contempt authority;¹⁰ **(87)**

217 b. Evaluate appropriate procedures (as supplements to existing disciplinary
218 procedures) to allow immigration judges to address trial counsel's lack of
219 preparation, lack of substantive or procedural knowledge or other conduct that
220 impedes the court's operation **(86)**; and

221 c. Explore options for developing educational and training resources such as
222 seeking pro bono partnerships with reputable educational or CLE providers
223 and/or seeking regulatory authority to impose fines to subsidize the cost of
224 developing such materials. **(86)**

¹⁰ The Immigration and Nationality Act of 1952 ("INA"), § 240(b)(1) (2010); 8 U.S.C. § 1229a(b)(1) (2006).



225 **C. Recommendations to DHS Regarding Notice to Appear Forms**

226 22. DHS should consider revising the NTA form or instruct its completing officers to clearly
227 indicate officer’s agency affiliation, being specific about the entity preparing the NTA, in
228 order to enhance the immigration court’s ability to better estimate future workload.¹¹
229 **(36)**

230 23. DHS should conduct a pilot study evaluating the feasibility of requiring (in appropriate
231 cases) the approval of an ICE attorney prior to the issuance of any NTA. The pilot study
232 should be conducted in offices with sufficient attorney resources and after full study of
233 the efficiencies and operational changes associated with this requirement, DHS should
234 consider requiring attorney approval in all removal proceedings. **(37)**

235 **D. Recommendations to EOIR Regarding the Asylum Process**

236 24. To facilitate the processing of defensive asylum applications, EOIR should consider
237 having the OCIJ issue an OPPM entry, which: **(79)**

238 a. Explains that appropriate procedures for a respondent’s initial filing of an asylum
239 application with the immigration court do not require the participation of the
240 judge and oral advisals made on the record at the time of the initial filing;¹²

241 b. Authorizes court personnel to schedule a telephonic status conference with the
242 judge and ICE attorney in any situation where the respondent or his/her
243 representative expresses a lack of understanding about the asylum filing and
244 advisals;

¹¹ The purpose of this recommendation, coupled with Recommendation ¶ 3b, is to allow EOIR to better refine its information about immigration court workload by expanding its data collection field to include a record of the sources for each NTA form filed in immigration court.

¹² “Oral advisal” is a term used by immigration courts to mean warnings given by an immigration judge about the procedural and substantive consequences for various actions.



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245 c. Notes that the immigration judge may renew, at the merits hearing, the advisal
246 of the danger of filing a frivolous application and allow an opportunity for the
247 respondent to withdraw the application; and

248 d. Makes clear that the filing with immigration court personnel qualifies as a filing
249 with the court, satisfies the statutory one-year filing deadline in appropriate
250 cases and for the purposes of commencing the 180-day work authorization
251 waiting period.

252 25. EOIR should consider seeking enhanced facilitation of defensive asylum applications by
253 amending its current procedure of having judges “adjourn” asylum cases involving
254 unaccompanied juveniles while the case is adjudicated within the DHS Asylum Office
255 and instead have the judge administratively close the case. If the Office subsequently
256 cannot grant the asylum or other relief to the juvenile, the Office can refer the case to
257 ICE counsel to initiate a motion to re-calendar the removal proceeding before the judge.
258 **(42)**

259 26. EOIR should give priority to the use of adjournment codes for the purpose of managing
260 immigration judges’ dockets and stop using these codes to track the number of days an
261 asylum application is pending. **(54)**

262 **E. Recommendation to DHS Regarding the Asylum Process**

263 27. DHS should consider revising its regulations and procedures to allow asylum and
264 withholding applicants to presumptively qualify for work authorization provided that at
265 least 150 days have passed since the filing of an asylum application.¹³ **(54)**

¹³ See *Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 54-55 (describing in detail how these revised regulations would work under this recommendation).



266 **F. Recommendations Regarding Further Study of Immigration Adjudication and the**
267 **Asylum Process**

268 28. With the active participation of DHS and EOIR and with input from all other relevant
269 stakeholders, a comprehensive study of the feasibility and resource implications of the
270 following issues related to proposed changes to the asylum process should be
271 conducted:

272 a. Whether DHS should direct some appeals currently in the BIA's jurisdiction to
273 more appropriate forums and subject to the availability of resources by: **(50)**

274 i. Seeking statutory and regulatory change to allow all appeals of denied I-
275 130 petitions to be submitted to the United States Citizenship and
276 Immigration Services' Administrative Appeals Office ("AAO");

277 ii. Amending regulations to send all appeals from United States Customs
278 and Border Protection ("CBP") airline fines and penalties to AAO; or
279 alternatively consider eliminating any form of administrative appeal and
280 have airlines and other carriers seek review in federal courts; and

281 iii. Creating a special unit for adjudication within the AAO to ensure quality
282 and timely adjudication of family-based petitions, which should:

283 1. Formally segregate the unit from its other visa petition
284 adjudications;

285 2. Issue precedent decisions with greater regularity and increase the
286 unit's visibility; and



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- 287 3. Publicize clear processing time frames so that potential appellants
288 can anticipate the length of time the agency will need to complete
289 adjudication.
- 290 b. Whether EOIR should seek enhanced facilitation of defensive asylum
291 applications by amending its regulations to provide that where the respondent
292 seeks asylum or withholding of removal as a defense to removal, the judge
293 should administratively close the case to allow the respondent to file the asylum
294 application and/or a withholding of removal application in the DHS Asylum
295 Office; and if the Office does not subsequently grant the application for asylum
296 or withholding, or if the respondent does not comply with the Office procedures,
297 that office would refer the case to ICE counsel to prepare a motion to re-
298 calendar the case before the immigration court. **(42)**
- 299 c. Whether the United States Citizenship and Immigration Services (“USCIS”)
300 should expedite the asylum process by: **(39 re §§ c and d)**
- 301 i. Amending its regulations to provide an asylum officer with authority to
302 approve qualified asylum applications in the expedited removal context;
- 303 ii. Allocating additional resources to complete the asylum adjudication in
304 the expedited removal context; as there may be significant net cost
305 savings for other components of DHS and for EOIR;
- 306 iii. Amending its regulations to clarify that an individual, who meets the
307 credible fear standard, could be allowed to complete an asylum
308 application with an asylum officer instead of at an immigration court; and
- 309 iv. Allowing an asylum officer to grant an applicant parole into the U.S.
310 where the officer believes the individual has a well-founded fear of
311 persecution or fear of torture and permit the officer to recommend that



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312 DHS allow the individual to be released from detention on parole pending
313 completion of the asylum process.

314 d. Whether USCIS should clarify that an asylum officer may prepare an NTA and
315 refer a case to immigration court where an officer determines that a non-citizen
316 meets the credible fear standard but the officer believes that the case cannot be
317 adequately resolved based on the initial interview and the asylum application
318 prepared in conjunction with that interview, or in cases where an officer believes
319 there are statutory bars to full asylum eligibility.

320 e. Whether DHS should facilitate the DHS Asylum Office's adjudication of certain
321 closely related claims by: **(47)**

322 i. Amending its regulations to authorize the Office to adjudicate eligibility
323 for withholding of or restriction on removal providing also that if the
324 Office grants such relief, there would be no automatic referral to the
325 immigration court;

326 ii. Amending its regulations to authorize the Office to grant "supervisory
327 release," identity documents, and work authorization to individuals who
328 meet the legal standards for withholding or restriction on removal;

329 iii. Developing a procedure in cases where withholding or supervisory
330 release are offered requiring the Office to issue a Notice of Decision
331 explaining the impediments to asylum, informing an applicant of his or
332 her right to seek de novo review of the asylum eligibility before the
333 immigration court, and explaining the significant differences between
334 asylum and withholding protections; and



335 iv. Developing a procedure to allow such applicants to request immigration
336 court review, whereupon the Asylum Office would initiate a referral to
337 the immigration court.

338 **G. Recommendations to EOIR and DHS Regarding the Use of VTC and Other Technology**

339 29. EOIR and DHS should provide and maintain the best video teleconferencing (“VTC”)
340 equipment available within resources and the two agencies should coordinate, where
341 feasible, to ensure that they have and utilize the appropriate amount of bandwidth
342 necessary to properly conduct hearings by VTC. **(88, re §§ 29-33)**

343 30. EOIR should consider more systematic assessments of immigration removal hearings
344 conducted by VTC in order to provide more insights on how to make its use more
345 effective and to ensure fairness. Assessments should be periodically published and
346 include:

- 347 a. Consultation with the DHS Asylum Office regarding its use of VTC equipment and
348 review of its best practices for possible adoption and integration into EOIR
349 procedures;
- 350 b. Random selection of hearings conducted by VTC for full observation by Assistant
351 Chief Immigration Judges and/or other highly trained personnel;
- 352 c. Formal evaluation of immigration removal hearings conducted by VTC;
- 353 d. Gathering information, comments and suggestions from parties and other
354 various stakeholders about the use of VTC in immigration removal hearings; and
- 355 e. A realistic assessment of the net monetary savings attributable to EOIR’s use of
356 VTC equipment for immigration removal hearings.

357 31. EOIR should:



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- 358 a. Encourage its judges, in writing and by best practices training, to (a) be alert to
359 the possible privacy implications of off-screen third parties who may be able to
360 see or hear proceedings conducted by VTC, and (b) take appropriate corrective
361 action where procedural, statutory or regulatory rights may otherwise be
362 compromised; and
- 363 b. Consider amending the OCIJ Practice Manual's §4.9 ("Public Access") to remind
364 respondents and their representatives that they may alert the judge if they
365 believe unauthorized third parties are able to see or hear the proceedings.
- 366 32. EOIR should direct judges to inform parties in hearings conducted by VTC who request
367 in-person hearings of the possible consequences if the judge grants such a request,
368 including, but not limited to, delays caused by the need to re-calendar the hearing to
369 such time and place that can accommodate an in-person hearing.
- 370 33. To facilitate more effective representation in removal proceedings where VTC
371 equipment is used, EOIR should:
- 372 a. Provide more guidance to respondents and their counsel about how to prepare
373 for and conduct proceedings using VTC in the OCIJ Practice Manual and other
374 aids it may prepare for attorneys, and for pro se respondents;
- 375 b. Encourage judges to permit counsel and respondents to use the courts' VTC
376 technology, when available, to prepare for the hearing; and
- 377 c. Encourage judges to use the VTC technology to allow witnesses to appear from
378 remote locations when appropriate and when VTC equipment is available.
- 379 34. To improve the availability of legal consultation for detained respondents and help
380 reduce continuances granted to allow attorney preparation, DHS should consider: ~~(64-~~
381 ~~66 re §§ 34-36)~~



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- 382 a. Providing VTC equipment where feasible in all detention facilities used by DHS,
383 allowing for private consultation and preparation visits between detained
384 respondents and private attorneys and/or pro bono organizations;
- 385 b. Requiring such access in all leased or privately controlled detention facilities
386 where feasible;
- 387 c. In those facilities where VTC equipment is not available, designating duty officers
388 whom attorneys and accredited representatives can contact to schedule collect
389 calls from the detained respondent where feasible; and
- 390 d. Facilitating the ability of respondents to have private consultations with
391 attorneys and accredited representatives.
- 392 35. To improve the availability of legal reference materials for detained respondents:
- 393 a. DHS should make available video versions of the KYR presentations on demand
394 in detention facility law libraries; and where feasible, to be played on a regular
395 basis in appropriate areas within detention facilities; and
- 396 b. EOIR should assist in or promote the transcription of the text of relevant videos
397 into additional languages or provide audio translations in the major languages of
398 the detained populations.
- 399 36. EOIR should encourage judges to permit pro bono attorneys to use immigration courts'
400 video facilities when available to transmit KYR presentations into detention centers and
401 subject to DHS policies on KYR presentations.
- 402 37. EOIR should move to full electronic docketing as soon as possible.



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- 403 a. Prior to full electronic docketing, EOIR should explore interim steps to provide
404 limited electronic access to registered private attorneys, accredited
405 representatives, and ICE trial attorneys; **(59)** and
- 406 b. EOIR should consider the interim use of document cameras in video proceedings
407 prior to the agency's full implementation of electronic docketing and electric
408 case files. **(88, 94)**