Committee on Adjudication

Proposed Recommendation | Immigration Removal Adjudication

PREAMBLE

The U.S. immigration removal adjudication agencies and processes have been the objects of critiques by the popular press, organizations of various types, legal scholars, advocates, U.S. courts of appeals judges, immigration judges, Board of Immigration Appeals members, and the Government Accountability Office.[1] One of the biggest challenges identified in the adjudication of immigration removal cases is the backlog of pending proceedings and the limited resources to deal with the caseload. A study issued in August 2010 by the Transactional Records Access Clearinghouse at Syracuse University reports that the number of cases pending before immigration courts within the Executive Office for Immigration Review ("EOIR") recently reached an all-time high of nearly 248,000 and that the average time these cases have been pending is 459 days.[2] Similarly, a February 2010 study by the American Bar Association's Commission on Immigration reports that the number of cases is "overwhelming" the resources that have been dedicated to resolving them.[3]

The numerous studies examining immigration removal adjudication have focused on the two agencies principally involved: the U.S. Department of Justice's Executive Office for Immigration Review ("EOIR") and the U.S. Department of Homeland Security ("DHS"), specifically two components: the United States Citizenship and Immigration Services ("USCIS")

[1] *See* Lenni B. Benson and Russell R. Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication: A Draft Report*, 23-25, nn. 68-76 (April 16, 2012) *available at* http://www.acus.gov/wp-content/uploads/downloads/2012/04/Revised-ACUS-Immigration-Removal-Adjudication-Draft-Report-4_16.pdf. [Hereinafter *Immigration Removal Adjudication Rept. (Apr. 2012)*].

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

[3] 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, [Hereinafter *ABA Comm'n on Immigr. Rept. 2010*].

and Immigration and Customs Enforcement ("ICE"). Prior studies about EOIR have noted the limited resources available to the agency and called for more resources to hire more immigration judges and support staff and thus ease the backlog of cases; criticized immigration judge hiring standards and procedures, and recommended enhanced orientation, continuing education, and performance monitoring.[4]

In light of the backlog of cases in immigration courts and the limited resources currently available to EOIR, consultants for the Administrative Conference of the United States conducted a comprehensive and detailed study of potential improvements in immigration removal adjudication in EOIR.[5] Following the study and consistent with the Conference's statutory mandate of making improvements to the regulatory and adjudicatory process by improving the effectiveness and fairness of applicable laws, the Conference issues this Recommendation directed at reducing the backlog and enhancing fairness and effectiveness in immigration removal adjudication cases. Consistent with the Conference's mission, this Recommendation urges a substantial number of improvements in immigration removal adjudication procedures, but does not address substantive immigration reform. The pervading theme of this Recommendation is enhancing the immigration courts' ability to dispose of cases fairly and as efficiently as possible. Many of the recommendations are aimed at structuring the pre-hearing process to allow more time for immigration judges to give complex cases adequate consideration. This Recommendation is directed at EOIR and DHS components' USCIS and ICE. A few parts of this Recommendation would also impact the practices of United States Customs and Border Protection ("CBP"), another component of DHS.

RECOMMENDATION

PART I. Immigration Court Management and Tools For Case Management

Recommendations to EOIR Regarding Immigration Court Resources, Monitoring Court Performance and Assessing Court Workload:

[4] *See Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 26-30.

[5] *See generally Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1.

1. To encourage the enhancement of resources, the U.S. Department of Justice's Executive Office for Immigration Review ("EOIR") should:
    a. Continue to seek appropriations beyond current services levels but also plan for changes that will not require new resources;
    b. Continue to make the case to Congress that funding legal representation for respondents (*i.e.* non-citizens in removal proceedings), especially those in detention, will produce efficiencies and net cost savings; and
    c. Continue to give high priority for any available funds for EOIR's Legal Orientation Program ("LOP") and other initiatives of EOIR's Office of Legal Access Programs, which recruit non-profit organizations to provide basic legal briefings to detained respondents and seek to attract pro bono legal providers to represent these individuals.
2. To monitor immigration court performance, EOIR should:
    a. Continue its assessment of the adaptability of performance measures used in other court systems;
    b. Include rank-and-file immigration judges and U.S. Department of Homeland Security ("DHS") agencies in the assessment of the court's performance;
    c. Include meaningful public participation in its assessment; and
    d. Publicize the results of its assessment.
3. To refine its information about immigration court workload, EOIR should:
    a. Explore case weighting methods used in other high volume court systems to determine the methods' utility in assessing the relative need for additional immigration judges and allowing more accurate monitoring and analysis of immigration court workload;
    b. Expand its data collection field to provide a record of the sources for each Notice to Appear form ("NTA") filed in immigration courts;[6]

[6] *See Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 15, 36-39 (describing a Notice to Appear form as the document setting forth the charges and allegations issued in an immigration removal

c. Continue its evaluation of adjournment code data, as an aid to system-wide analysis of immigration court case management practices and devise codes that reflect the multiplicity of reasons for an adjournment;

d. Expand the agency's coding scheme to allow judges or court administrators to identify what the agency regulations call "pre-hearing conferences," sometimes known as "status conferences;" and

e. Authorize a special docket for cases awaiting biometric results with a special coding for these cases to allow later measurement of the degree to which such security checks are solely responsible for the delays.

Recommendations to EOIR Regarding Immigration Court Management Structure and Court Workforce:

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

5. To increase the immigration court workforce, EOIR should:

   a. Consider the use of temporary immigration judges as permitted by its regulations. If temporary immigration judges are used, EOIR should use transparent procedures to select such judges and rigorous procedures for monitoring judges' performance;

   b. Consider the National Association of Immigration Law Judges' ("NAIJ") proposal for instituting senior status (through part-time reemployment or independent contract work) for retired immigration judges;[7] and

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adjudication case and explaining how this recommendation necessarily involves DHS and requires cooperation from DHS, as it is the agency issuing NTAs); *see also* this Recommendation at ¶ 21.

[7] *See Improving Efficiency and Ensuring Justice in the Immigration Court System: Hearing Before the S. Comm. on the Judiciary,* 112th Cong. (2011) (statement of National Association of Immigration Judges), *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 ("Act") for FY 2010, Public Law 111-84 where

c. Consider using the same pool of government employees from whom EOIR would select temporary judges to select temporary immigration court law clerks.

6. To promote transparency about hiring practices within the agency and to the extent consistent with any statutory restrictions to protect privacy, EOIR should periodically publish summary and comparative data on immigration judges, Board of Immigration Appeals members, and support staff as well as summary information on judges' prior employment.[8]

7. EOIR should expand its webpage entitled "Immigration Judge Conduct and Professionalism" that discusses disciplinary action to include an explanation of why the agency is barred by statute from identifying judges upon whom it has imposed formal disciplinary action.

8. EOIR should consider incorporating elements of the American Bar Association's and the Institute for the Advancement of the American Legal System's Judicial Performance Evaluation models into its performance evaluation process, including the use of a separate body to conduct agency-wide reviews.[9]

Recommendations to EOIR Regarding the Use of Status Conferences, Administrative Closures and Stipulated Removals:

9. To test the utility of status conferences, EOIR should:

Congress facilitated part-time reemployment of Federal employees retired under CSRS and FERS on a limited basis, with receipt of both annuity and salary).

[8] 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; *see Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 103-105 (describing the immigration judges selection process and criteria for selection).

[9] *See Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 105-107, n. 260 (*citing* Institute for the Advancement of the American Legal System, *Quality Judges Initiative*, U. Denv. http://www.du.edu/legalinstitute/jpe.html (providing JPE 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).

a. Assemble a working group to examine immigration judges' perceptions of the utility, costs and benefits of such conferences;

b. Consider a pilot project to test the effectiveness of mandatory pre-hearing conferences to be convened in specified categories of cases and to evaluate situations in which the judge should order the trial attorney to produce essential records from the respondent's file;

c. Evaluate the use of EOIR's Form-55[10] and consider creating a new form (similar to scheduling orders used in other litigation contexts); and

d. Recommended procedures for stipulations by represented parties.

10. To clarify the proper use of administrative closure (i.e., temporarily suspending the case) in immigration removal adjudication cases, EOIR should:

a. Amend the OCIJ Practice Manual to specifically define "Motions for Administrative Closure;"

b. Issue an Operating Policies and Procedures Manual ("OPPM") entry or amend appropriate regulations to:

i. Authorize an immigration judge to initiate such a motion *sua sponte*;

ii. Indicate that a specific basis for administrative closure should be the failure of the parties to meet and confer as previously directed by the judge; and

iii. Authorize government and private attorneys, under the procedural rules, to object to administrative closure orally or in writing;

c. Develop guidance for immigration judges on when administrative closure is appropriate over the objection of the respondent; and

d. Amend appropriate regulations so that once a respondent has formally admitted or responded to the charges and allegations in an NTA, the government's ability to amend the charges and allegations can only be considered by the immigration

[10] *See* "Record of Master Calendar Form" in "Tools for the IJ" *available at* http://www.justice.gov/eoir/vll/benchbook/index.html.

judge on motion and can only be approved by the immigration judge with good cause shown as to why the government could not have presented the charges or allegations earlier.

11. EOIR should consider a pilot project to systematically test the utility of stipulated removal orders (provided that respondents have been counseled by independent attorneys) as a mechanism to (a) reduce detention time, (b) allow judges to focus on contested cases, and (c) assess whether and when the use of stipulated removals might diminish due process protections.[11]

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

Recommendations to EOIR and DHS Regarding the BIA:

13. EOIR should finalize its 2008 proposed regulations to allow greater flexibility in establishing three-member panels for the Board of Immigration Appeals ("BIA").[12]

14. To direct some appeals currently in the BIA's jurisdiction to more appropriate forums and subject to the availability of resources, DHS should:

[11] *See Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 80-81 (evaluating the use of stipulated removal orders).

[12] *See Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 103, n. 242 (citing Board of Immigration Appeals: Affirmance Without Opinion, Referral for Panel Review, and Publication of Decisions as Precedents, 73 Fed. Reg. 34,654 (proposed June 18, 2008)).

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

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

c. Create special unit for the adjudication within the AAO to ensure quality and timely adjudication of family-based petitions, which should:

i. Formally segregate the unit from its other visa petition adjudications;

ii. Issue precedent decisions with regularity and much more often and increase the unit's visibility; and

iii. Publicize clear processing time frames so that potential appellants can anticipate the length of time the agency will need to complete adjudication.

PART II. Immigration Removal Adjudication Cases and Asylum Cases

Recommendations to EOIR Regarding Prosecution Arrangements and the Responsibilities of Government Counsel:

15. EOIR should not oppose plans that the DHS Immigration and Customs Enforcement ("ICE") Chief Counsel may devise for vertical or unit prosecution arrangements in immigration courts.[13]

16. EOIR should consider providing immigration judges with additional guidance directed at ensuring that government counsel are prepared and responsible for necessary actions that DHS must complete between hearings. Specifically, EOIR should consider:

[13] The terms "vertical" or "unit" prosecution arrangements, as used in this Recommendation, refer to the practice, conducted in some immigration courts, where the ICE Chief Counsel organize ICE trial attorneys into teams and then assigned the teams to cover the dockets of specific judges; *see Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 77-79 (providing a full discussion of these arrangements).

a. Amending the Office of the Chief Immigration Judge's ("OCIJ") Practice Manual to explicitly define the responsibilities of trial attorneys in immigration removal proceedings;

b. Instructing judges to treat all government trial attorneys as responsible for the commitments, actions and omissions of other government trial attorneys in the same case;

c. Clarifying the authority for judges to make conditional decisions on applications for relief where government trial attorneys have not provided necessary information; and

d. Clarifying that where continuing the case would pose an undue hardship on the respondent, a judge may rule on a case, after allowing DHS a sufficient amount of time (under the totality of the circumstances) to complete a biometric or security check.

Recommendations to EOIR Regarding Representation:

17. To increase the availability of competent representation for respondents, EOIR should:

a. Do a more intensive assessment of the paraprofessional programs that provide legal representation and the accreditation process for such programs;

b. Continue its assessment of the accuracy and usefulness of the pro bono representation lists provided at immigration courts and on the agency's website; and

c. Develop a national pro bono training curriculum, tailored to detention and non-detention settings:

i. The training curriculum should be developed in consultation with groups that are encouraging pro bono representation.

ii. The trainings should be offered systematically and in partnership with CLE and non-profit providers.

18. To enhance the guidance available to legal practitioners and pro se respondents, EOIR should:

a. Develop a pro se version of the OCIJ Practice Manual that explains terms and concepts in plain language;

b. Share supplemental instructions developed by individual immigration courts or judges to aid the parties in preparing submissions to the immigration court; and

c. Develop video kiosks in immigration court waiting rooms or similar spaces so that the respondents can access the court website and find instructional materials.

19. To enhance the number and value of know-your-rights ("KYR") presentations given to detained respondents, EOIR should:

a. Ensure that KYR presentations are made sufficiently in advance of the initial master calendar hearings to allow adequate time for detained individuals to consider and evaluate the presentation information (to the extent consistent with DHS requirements for KYR providers);

b. Consider giving LOP providers electronic access to the court dockets in the same manner as it is currently provided to DHS attorneys representing the government in cases (with appropriate safeguards for confidentiality and national security interests); and

c. Encourage detention officers to provide lists of new detainees, their country of origin, and language requirements at the earliest possible stage to both immigration courts and LOP providers.

20. To encourage the use of limited appearances (by which counsel represent respondents in one or more phases of the litigation but not necessarily for its entirety) in appropriate circumstances, EOIR should:

a. Modify appropriate and underlying regulations as necessary;

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

c. Amend the OCIJ Practice Manual to reflect this modified policy.

21. EOIR should consider a limited multi-year pilot program (in a large immigration court or in a detention center with a large immigration docket) to assess whether the use of a pro se law clerk office would save costs, enhance fairness and improve efficiency.

22. To encourage improvement in the performance of the private bar, EOIR should:

    a. Develop appropriate procedures (as supplements to existing disciplinary procedures) to allow immigration judges to issue orders to show cause why an attorney should not be reprimanded for lack of preparation, or other behavior that impedes the court's operation;

    b. Continue its efforts to implement the statutory grant of immigration judge contempt authority;[14]

    c. Consider developing mandatory CLE materials that judges could order attorneys to complete (perhaps subject to a qualifying examination) based on a finding that an attorney's behavior is substandard due to lack of substantive or procedural knowledge; and

    d. Explore other options for developing CLE resources such as seeking pro bono partnerships with reputable CLE providers or seeking regulatory authority to impose fines to subsidize the cost of developing such materials.

Recommendations to DHS Regarding Notice to Appear Forms:

23. DHS should revise the NTA form to allow the completing officer to indicate easily the officer's agency affiliation, being specific about the entity preparing the NTA, in order to enhance the immigration court's ability to better estimate future workload.[15]

24. DHS should require the approval of an ICE attorney prior to the issuance of any NTA,--initially on a pilot basis in offices with sufficient attorney resources,--and after study of

[14] The Immigration and Nationality Act of 1952 ("INA"), § 240(b)(1) (2010); 8 U.S.C. § 1229a(b)(1) (2006); *see also Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 84-87 (fully detailing the history of EOIR's efforts to implement immigration judge contempt authority).

[15] *See also* this Recommendation at ¶ 3b.

the efficiencies and operational changes, expand the requirement of attorney approval in all removal proceedings.

Recommendations to EOIR Regarding the Asylum Process:

25. To facilitate the processing of defensive asylum applications, EOIR should have the OCIJ issue an OPPM entry, which:
    a. Explains that appropriate procedures for a respondent's initial filing of an asylum application with the immigration court do not require the participation of the judge and oral advisals made on the record at the time of the initial filing;
    b. Authorizes court personnel to schedule a telephonic status conference with the judge and ICE attorney in any situation where the respondent or his/her representative expresses a lack of understanding about the asylum filing and advisals;
    c. Notes that the immigration judge may renew, at the merits hearing, the advisal of the danger of filing a frivolous application and allow an opportunity for the respondent to withdraw the application; and
    d. Makes clear that the filing with immigration court personnel qualifies as a filing with the court for the purposes of measuring the 180-day work authorization waiting period.
26. EOIR should seek to facilitate consideration of defensive asylum applications by:
    a. Amending its regulations to provide that where the respondent seeks asylum or withholding of removal as a defense to removal, the judge should administratively close the case to allow the respondent to file the asylum application and/or a withholding of removal application in the DHS Asylum Office. If the Office does not subsequently grant the application for asylum or withholding, or if the respondent does not comply with the Office procedures, that office would refer the case to ICE counsel to prepare a motion to re-calendar the case before the immigration court.

b. Amending its current procedure of having judges "adjourn" asylum cases involving unaccompanied juveniles while the case is adjudicated within the DHS Asylum Office and instead have the judge administratively close the case. If the Office subsequently cannot grant the asylum or other relief to the juvenile, the Office can refer the case to ICE counsel to initiate a motion to re-calendar the removal proceeding before the judge.

27. EOIR should stop using adjournment codes to track the delays in asylum adjudication for the purpose of tracking the number of days an asylum application is pending. Instead, EOIR should focus on using adjournment codes for the purpose of managing immigration judges' dockets.[16]

Recommendations to DHS Regarding the Asylum Process:

28. In order to expedite the asylum process, the United States Citizenship and Immigration Services' ("USCIS") should:

a. Consider amending its regulations to provide an asylum officer with authority to approve qualified asylum applications in the expedited removal context;

b. Consider allocating additional resources to complete the asylum adjudication in the expedited removal context; as there are significant net cost savings for other components of DHS and for EOIR;

c. Seek to amend its regulations to clarify that an individual, who meets the credible fear standard, could be allowed to complete an asylum application with an asylum officer instead of at an immigration court; and

d. Allow an asylum officer to grant an applicant parole into the U.S. where the officer believes the individual has a well-founded fear of persecution or fear of torture and permit the officer to recommend that DHS allow the individual to be released from detention on parole pending completion of the asylum process.

[16] *See Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 54-55 (explaining the problems with the current use of adjournment codes by EOIR and how revising that use will aid immigration judges in managing their docket).

29. USCIS should clarify that an asylum officer may prepare an NTA and refer a case to immigration court where an officer determines that a non-citizen meets the credible fear standard but the officer believes that the case cannot be adequately resolved based on the initial interview and the asylum application prepared in conjunction with that interview, or in cases where an officer believes there are statutory bars to full asylum eligibility.[17]

30. In order to facilitate the DHS Asylum Office's adjudication of certain closely related claims, DHS should:

    a. Amend its regulations to authorize the Office to adjudicate eligibility for withholding of or restriction on removal. If the Office grants such relief, there would be no automatic referral to the immigration court;

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

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

    d. Develop a procedure to allow such applicants to request immigration court review, whereupon the Asylum Office would initiate a referral to the immigration court.

[17] *See Immigration Removal Adjudication Rept. (Apr. 2012)*, *supra* note 1, at 46-52 (recommending that USCIS evaluate whether a fee is appropriate for the defensive filing of an asylum application in order to help implement this recommendation).

31. DHS should consider revising its regulations and procedures to allow asylum and withholding applicants to presumptively qualify for work authorization provided that at least 150 days have passed since the filing of an asylum application.[18]

Recommendations to EOIR and DHS Regarding the Use of VTC and Other Technology:

32. EOIR and DHS should provide and maintain first rate video teleconferencing ("VTC") equipment and the two agencies should coordinate to ensure that they have and utilize the appropriate amount of bandwidth necessary to properly conduct hearings by VTC.
33. EOIR should consider more systematic assessments of immigration removal hearings conducted by VTC in order to provide more insights on how to make its use more effective and to ensure fairness. Assessments should be periodically published and include:
    a. Consultation with the DHS Asylum Office regarding its use of VTC equipment and review of its best practices for possible adoption and integration into EOIR procedures;
    b. Random selection of hearings conducted by VTC for observation by Assistant Chief Immigration Judges and/or other highly trained personnel;
    c. Formal evaluation of immigration removal hearings conducted by VTC;
    d. Gathering information, comments and suggestions from parties and other various stakeholders about the use of VTC in immigration removal hearings; and
    e. A realistic assessment of the net monetary savings attributable to EOIR's use of VTC equipment for immigration removal hearings.
34. EOIR should:
    a. Encourage its judges, in writing and by best practices training, to (a) be alert to the possible privacy implications of off-screen third parties who may be able to see or hear proceedings conducted by VTC, and (b) take appropriate corrective

[18] *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).

action where procedural, statutory or regulatory rights may otherwise be compromised; and

b. Amend the OCIJ Practice Manual's §4.9 ("Public Access") to remind VTC respondents and their representatives that they may alert the judge if they believe unauthorized off-screen third parties may be able to see or hear the proceedings.

35. EOIR should direct judges to inform parties in hearings conducted by VTC who request in-person hearings of the possible consequences if the judge grants such a request, including, but not limited to, delays caused by the need to re-calendar the hearing to such time and place that can accommodate an in-person hearing.

36. To facilitate more effective representation in removal proceedings where VTC equipment is used, EOIR should:

a. Provide more guidance to respondents and their counsel about how to prepare for and conduct proceedings using VTC in the OCIJ Practice Manual and other aids it may prepare for attorneys, and for pro se respondents;

b. Encourage judges to permit counsel and respondents to use the courts' VTC technology, when available, to prepare for the hearing; and

c. Encourage judges to use the VTC technology to allow witnesses to appear from remote locations when appropriate and when VTC equipment is available.

37. To improve the availability of legal consultation for detained respondents and help reduce continuances granted to allow attorney preparation, DHS should:

a. Provide VTC equipment in all detention facilities used by DHS, allowing for private consultation and preparation visits between detained respondents and private attorneys and/or pro bono organizations;

b. Require such access in all leased or privately controlled detention facilities;

c. In those facilities where VTC equipment is not available, designate duty officers whom attorneys and accredited representatives can contact to schedule collect calls from the detained respondent; and

d. Ensure that respondents are able to have private consultations with attorneys and accredited representatives.

38. To improve the availability of legal reference materials for detained respondents, DHS and/or EOIR should:

a. Provide video versions of the KYR presentations in every detention facilities available to be played in the living quarters throughout the day and on demand in the law libraries; and

b. Assist in the transcription of the text of relevant videos into additional languages or provide audio translations in the major languages of the detained populations.

39. EOIR should encourage judges to permit pro bono attorneys to use immigration courts' video facilities when available to transmit KYR presentations into detention centers and subject to DHS policies on KYR presentations.

40. EOIR should move to full electronic docketing as soon as possible.

a. Prior to full electronic docketing, EOIR should explore interim steps to provide limited electronic access to registered private attorneys, accredited representatives, and ICE trial attorneys.

b. EOIR should consider the interim use of document cameras in video proceedings prior to the agency's full implementation of electronic docketing and electric case files.