

Administrative Conference of the United States
Adjudication Committee Meeting, April 5, 2012

March 29, 2012

To Members of the Adjudication Committee
Fr Lenni Benson and Russell Wheeler
Re: Video Technology-Related Material from Interim Draft on “Enhancing Quality and Timeliness in Immigration Removal Adjudication”

Below are the recommendations from our report that we suggest the committee take up at its April 5 meeting. They involving (a) using video technologies to enhance the availability of legal advice and representation to those in removal proceedings, and (b) using video conferencing to conduct hearings.

Please note:

- The accompanying 16-page document contains revised sections of the February 17 interim report.
- Below we have listed the recommendation for discussion on April 5 and the page numbers of the 15-page document that provide the supporting analysis.

See pages 1-3, concerning the use of video technology to increase respondents’ access to legal advice and representation.

16. That DHS, to improve the availability of legal consultation for detained respondents and help reduce continuances granted to allow attorney preparation:
 - a. provide video technology in all detention facilities allowing private consultation and preparation visits between detainees and counsel;
 - b. require such access in all leased or privately controlled detention facilities.
 - c. in those facilities where video technology is not available, designate duty officers whom attorneys and accredited representatives can contact to schedule collect calls from the detainee.
17. That DHS and/or EOIR, to improve the availability of legal reference materials for detained respondents:
 - a. provide video versions of the “Know-Your-Rights” presentations in every detention facilities available to be played in the dorms throughout the day and on demand in the law libraries;
 - b. assist in the transcription of the text of the forthcoming ABA Immigration Commission video into additional languages or provide audio translations in the major languages of the detained populations.
- 18 That EOIR encourage judges to permit pro bono attorneys to use the court’s video facilities to transmit KYR presentations into detention centers.

See pages 3-16, concerning use of video conferencing (also called video teleconferencing—VC or VTC) in hearings for removal and bond redetermination hearings.

Pages:

- 3-5 Summarize VTC's use in immigration courts.
- 5-10 Summarize competing claims about VTC's use, specifically:
 - 6-7 Quality of transmission;
 - 8 Effect on representation and translation;
 - 8-9 Effect on case management;
 - 9-10 Cost.
- 10-13 Summarize results of our judges' survey.
- 13-15 Analyze (preliminarily) possible VTC effects on outcomes (in asylum cases).
- 15-16 Present the recommendations below.

- 37. That EOIR and DHS, in light of the judges' generally negative evaluations of VTC—especially evaluations from judges who serve primarily detained dockets—provide and maintain first rate VTC equipment.
- 38. That EOIR, in order to facilitate more effective representation in removal proceedings, including self-representation:
 - a. provide— in the OCIJ Practice Manual and other aides it may prepare for attorneys, and for pro se respondents—more guidance about how to prepare for and conduct proceedings using VTC.; and
 - b. encourage judges to permit counsel and respondents to use the courts' VTC technology to prepare for the hearing so that their first experience is not the high stakes hearing.
- 39. That EOIR consider more systematic assessments of VTC beyond the informal monitoring that it conducts today, not for the purpose of revisiting the use of VTC, to which Congress and EOIR are committed, but rather to provide more systematic information on how to make its use more effective and to ensure against undue prejudice. Assessments might include:
 - a. consultation with the Asylum Office and review of their VTC best practices for possible adoption and integration into EOIR procedures;
 - b. randomly selecting VTC hearings for observation by ACIJs and/or other highly trained personnel such as BIA staff attorneys or visits by senior members of the Asylum Office, to prepare formal evaluations of the VTC hearings, especially those involving claims for asylum or other humanitarian relief. Ideally these special observers would also review a random selection of in-person hearings to offer a comparative assessment;
 - c. providing surveys or questionnaires to the parties and their witnesses to gather information about how the VTC may have impaired hearing during the proceeding and evaluating the data collected periodically to determine if corrections to procedures or technology are warranted;
 - d. a realistic assessment of the net monetary savings attributable to EOIR's use of VTC;
 - e. in the interests of transparency, periodic publication of the results of these assessments.

40. That EOIR, as it works toward implementing electronic docketing and electric case files (which will permit ready access to documents in video proceedings), consider the interim use of document cameras in video proceedings to avoid the need to fax documents between locations.