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What the F*@k is Going on in the Immigration Court System?

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Hot Topic: What the F*@? is Going on in the Immigration Court System?

The idea of making Immigration Courts Article 1 Courts is not a new concept. In fact, proposals for this shift have been going on for well over a decade. The idea had been unable to pick up any momentum within the halls of Congress and the National Association of Immigration Judges (NAIJ) had pretty much given up hope that they would be able to change the current system.

However, with the election of President Trump, and the increasing size of dockets- it has become clear that Judicial Independence is of critical importance to preserve the fundamental due process that all respondents are entitled to under the law. Right now, the Department of Justice, is the Agency charged with control over all Administrative Immigration Courts in the United States. It also allows the Attorney General to select issues of significant importance and strip the court of its own jurisdiction and decide the issue on behalf of the entire Department. We have seen several examples of the AG's abuse of this power by taking up several cases and issuing decisions that significantly impact long standing immigration principles which continue to erode due process protections and stripping immigration judges of their independence in adjudicating their cases.

- ***Matter of Castro-Tum***: Related to an Immigration Judge's ability to use "administrative closure" to remove cases from their docket.
- ***Matter of L-A-B-R, et.al.***: Limiting the Immigration Judge's ability to grant a continuance more difficult and many times leading to the lack of ability to find representation in Immigration Court.
- ***Matter of S-O-G- & F-B-D :*** Preventing the Termination of cases and limiting the discretion of the Immigration Judge in trying to run their courts efficiently.
- ***Matter of AB :*** Basically wiped out the long held legal standard that survivors of domestic abuse and gang persecution could be protected under the rules for asylum
- ***Matter of E-F-H-L-:*** Giving the Immigration Judges the ability to deny asylum with a full evidentiary hearing.
- ***Matter of M-S-:*** Mandatory detention of asylum seekers even after meeting the credible fear standard.

The above examples are how an entire body of law can be wiped out with the swipe pen. It also shows the clear abuse of power by the former AG Jeff Sessions and the continued abuse by the newly confirmed AG Bill Barr who ruled on ***Matter of M-S-*** within the first month of his appointment to the position of AG.

There is something inherently wrong with the prosecuting agency having control over the Immigration Judges that are supposed to have independence to adjudicate the cases that have been brought before them. The Immigration Judges are required to rule on the law and they are also required to follow the policies set out by the Attorney General who is a political appointee of the

President charged with carrying out the overall policy goals of the current administration. The system has always been flawed, but at this moment in our history, the immigration courts are being used as a political instead of an independent adjudicator of the law. As a result, there continues to be the total erosion of due process through fair and consistent adjudications.

Completion Goals and Quotas for Immigration Judges

As of October 1, of 2018, all immigration judges are required to complete approximately 700 cases a year or be at risk of losing their jobs. In order to keep track of their own progress, software has been installed in all immigration courts so that the Immigration Judge has a daily reminder of his or her progress through a "dashboard" that keeps track of their progress. Almost all immigrant advocate organizations as well as the Immigration Judges' Union (NAIJ) have expressed strong opposition to the imposition of the quotas. It forces IJ's to focus on case completion instead of putting the focus on the decision making in the case. It becomes just one more area in which a respondent's right to due process in seeking relief is compromised. [i]

Video Teleconferencing

EOIR has also expanded its use of Video Teleconferencing (VTC) in order to expand capacity to hear more cases. In Fort Worth, Texas a newly opened "Adjudication Center" has been opened to help with the case backlog throughout the nation. These Immigration Judges are housed in a large warehouse facility that is not open to the public and does not allow for any public filing. The Immigration Judge sits in an office which is set up like a courtroom bench. The attorney and the trial attorney are usually in the same courtroom at a local Immigration Court. The Respondent is on a third screen usually at the detention center. Any witnesses are in the local courtroom with the trial attorney and Respondent's attorney. The Judge never has the opportunity to see the Respondent in person, but only on the computer screen. It also prevents the private lawyer from being able to have any confidential communication with their client.

There are other consistently reported problems with weak internet connections, audio issues that make it difficult if not impossible to present a case before the court. Moreover, when an interpreter is necessary, that adds an additional line of communication that must be added into the mix. There are a large percentage of interpreters that do not appear in person, but instead appear telephonically making it extremely difficult to make a good record or to hear which party is speaking on the record. In addition to the technology issues, it is difficult for an Immigration Judge to make a credibility determination as to witnesses if she or she is not present in the same room and is only looking at a limited view via tele-video. This just further illustrates the erosion of due process for Respondents who are fully entitled to a full and fair hearing process.

Immigration Courts by the Numbers

As of December 31, 2018, there was 821,726 pending cases in immigration courts nationwide. There are 414 Immigration Judges to serve those courts. These figures do not take into account the recent 35-day government shutdown and the estimated 60,000 cases that had to be cancelled during the shutdown and will need to be rescheduled. During the shutdown, the Government continued its law enforcement operations and continued to issue Notices to Appear that are now being filed with the Immigration Courts nationwide. There was a dramatic increase in dockets size after the elimination of prosecutorial discretion as well as the directive by the Attorney General to re-calendar all cases that had been administratively closed. According to AILA, there was a 25% increase in the number of cases pending from September 30, 2017 through December 31, 2018.[ii]

Article I Courts

What exactly would an Article 1 Court look like in the Immigration Court context? According to the ***ABA Commission on Immigrations Report: Reforming the Immigration Court System,*** the structure of an Article I Court would be comprised of the following:

- *Create Article I court with trial and appellate divisions, headed by Chief Trial Judge and Chief Appellate Judge, respectively. President appoints Chief Appellate Judge, other appellate judges, Chief Trial Judge, and possibly Assistant Chief Trial Judges, with advice and consent of Senate, from among persons screened and recommended by a Standing Referral Committee. Other trial judges appointed by Chief Trial Judge or Assistant Chief Trial Judges, also using Standing Referral Committee. Fixed terms of 12-15 years for appellate judges, 8-10 years for trial judges. Judges removable by appointing authority only for incompetency, misconduct, neglect of duty, malfeasance, or disability. Existing judges can serve out the remainder of the new fixed terms (which are deemed to have begun at the time of their prior appointment to current positions) and are eligible.* (2010 Recommendation) [iii]

- *Reaffirm recommendation in part. We support the creation of an Article I court system for the entire immigration judiciary, but suggest that the specific features regarding qualifications, selection, tenure, removal, administration, supervision, discipline and judicial review to be revisited in conjunction with other stakeholders; provided that, with respect to judicial review, final decisions of the new court should be subject to review in regional federal courts of appeals, with the scope of review being no less broad than under current law regarding review of BIA decisions.* (2019 Updated recommendation) [iv]

In order to make this a true possibility, it will take Congressional action with the passage of legislation and a long term restructuring plan for the Immigration Courts. The US Bankruptcy Courts are an example of a similar model that could be used for the Immigration Courts. There is a lot of support for this model including the National Association of Immigration Judges, The American Bar Association and AILA. This is about establishing a true independent immigration court system and maintaining the integrity of due process and the rule of law.

Conclusions:

There is one thing that I know for sure—the current Immigration Court System is completely dysfunctional and flawed from both an efficiency and a fundamental due process prospective. The courts are under resourced and over-burdened with an insurmountable number of cases which continue to grow every day. Moreover, the complexity of immigration law in the United States makes it difficult for new Immigration Judges to be adequately prepared to handle the complex cases that they are charged to adjudicate. The morale amongst the current Corps of Immigration Judges is said to be at an all-time low. There continues to be constant pressure to meet these arbitrary and unrealistic quotes of approximately 700 cases per year or better stated at least three Individual hearings a day. Anyone who has ever tried an asylum case know that it can be quite difficult to complete a full hearing even in a whole day of court. It is clear that this administration is only concerned with meeting metrics at the cost of fundamental due process and also at the heavy costs associated with hearing very complex and difficult cases which tend to be very emotionally and intellectually draining on the trier of fact. The whole system is on the verge of collapse and until we convince Congress to take action, the very people who are looking to the United States for protection and freedom are suffering the atrocities of this administration's policies which continue to violate the protections that this country was so proudly built upon.

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[i] AILA Document # 19021900- ***FOIA Reveals EOIR's Failed Plan For Fixing the Immigration Court Backlog***

[ii] Id.

[iii] ***ABA Commission on Immigration Report : Reforming the Immigration Court System*** (2019)

[iv] Id.

Appendix

Summary of Recommendations

2010 RECOMMENDATION	2019 UPDATE RECOMMENDATION	DISCUSSION *2010 Report* *2010 Executive Summary* *2019 Update*	AUTHORITY *(Existing, Regulation, or Legislation)* TIME *(Short Term or Long Term)* SCOPE[1] *(Incremental, Restructuring, or Both)*
Part 1: Department of Homeland Security			
Increase use of prosecutorial discretion by DHS officers and attorneys to reduce the number of Notices to Appear served on noncitizens and to reduce the number of issues litigated.	Reaffirm recommendation. Training, guidance, support, and encouragement should be provided to ensure that DHS officers and attorneys properly exercise prosecutorial discretion and to help alleviate the backlog of cases by better balancing the goals of enforcement priorities, while still encouraging the use of prosecutorial discretion. The use of discretion should be emphasized at all levels of enforcement, including trial attorneys' ability to resolve matters in pretrial conferences, and judges' ability to prioritize cases to the top of the docket.	1-IV.A.1 ES-20 UD 1-III.3.A, IV.A.	Regulation Short Term Both
Give DHS attorneys greater control over the initiation of removal proceedings. In DHS local offices with sufficient attorney resources, establish a pilot program requiring approval of a DHS attorney prior to issuance of all discretionary Notices to Appear by DHS officers.	Reaffirm recommendation. Additionally, as suggested by the DHS Inspector General in a 2015 congressional hearing, DHS should collect and release data on how prosecutorial discretion is implemented. DHS should also enact the Inspector General's recommendation and create a mechanism for evaluating the use of prosecutorial discretion.	1-IV.A.2 ES-20 UD 1-III.F, IV.A	Regulation Short Term Both
To the extent possible, assign one DHS trial attorney to each removal proceeding, which would increase efficiency and facilitate the exercise of prosecutorial discretion in a manner consistent with DHS policies.	Reaffirm recommendation. Additional coordination, training, and oversight on how the field offices are applying priorities are key to ensuring nationwide consistency and fairness in the Department's efforts to alleviate the overburdened system.	1-IV.A.3 ES-20 UD 1-III.F, IV.A	Existing Long Term Both

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Part 1: Department of Homeland Security (continued)			
Authorize USCIS asylum officers to review asylum claims that are raised in expedited removal proceedings. The asylum officer would be authorized either to grant asylum if warranted or refer the claim to the immigration court.	Reaffirm recommendation. Additionally, DHS should consider exemptions from the expedited removal proceedings for certain groups of people (e.g., immigrants coming from regions in the Northern Triangle where violence is particularly high).	1-IV.A.4 ES-20 UD 1-III.D.1, III.H.4, IV.A	Regulation Long Term Both
It may be possible to divert to the Asylum Division defensive asylum claims arising in removal proceedings in the immigration courts and thereby further reduce the burden on immigration courts and trial attorneys.	See above.	1-IV.A.4 ES-20 UD 1-III.D.1, III.H.4, IV.A	Legislation, Regulation Long Term Both
Cease issuing Notices to Appear to noncitizens who are prima facie eligible to adjust to lawful permanent resident status.	Reaffirm recommendation. Additionally, DHS should clarify which persons are meant to be included when demonstrating prima facie eligibility for relief.	1-IV.A.5 ES-20 UD 1- IV.A	Existing Short Term Both
Create a position within DHS to oversee and coordinate all aspects of DHS immigration policies and procedures, including asylum matters.	Reaffirm recommendation.	1-IV.B ES-21 UD 1-III.F, IV.A	Existing Long Term Both
Permit all eligible noncitizens to adjust to lawful permanent resident status while in the U.S. Alternatively, eliminate the three-year, ten-year, and permanent bars to reentry, which will encourage eligible noncitizens who have accrued unlawful presence in the U.S. to become lawful permanent residents by consular processing outside of the U.S.	Reaffirm recommendation. In addition ensure provisional unlawful presence waivers to have the intended effect of not separating families for periods that are longer than necessary.	1-IV.C.1 ES-21 UD 1-III.H.5, IV.C.1	Legislation Short Term Both
Amend the definition of "aggravated felony" to require that any conviction must be of a felony and that a term of imprisonment of more than one year must be imposed (excluding any suspended sentence).	Reaffirm recommendation.	1-IV.C.2 ES-22 UD 1-IV.C.2	Legislation Short Term Both

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Part 1: Department of Homeland Security (continued)			
Eliminate the retroactive application of aggravated felony provisions.	Reaffirm recommendation.	1-IV.C.2 ES-22 UD 1-IV.C.2	Legislation Short Term Both
Amend the INA to require that a single conviction of a crime involving moral turpitude is a basis for deportability only if a sentence of more than one year is actually imposed. Alternatively, amend the INA to require a potential sentence of more than one year.	Reaffirm recommendation.	1-IV.C.3 ES-22 UD 1-III.E.1, IV.C.3	Legislation Short Term Both
Withdraw In re Silva-Trevino, 24 I&N Dec. 687 (AG 2008), and reinstate the categorical approach in removal and other immigration proceedings to determining whether a criminal conviction is of a crime involving moral turpitude, rather than holding open-ended hearings on the facts underlying past convictions.	Reaffirm recommendation.	1-IV.C.3.b ES-23 UD 1-III.E.1, IV.C.3	Existing Short Term Both
Curtail the use of administrative process by which DHS officers may order the removal of noncitizens who are alleged to be "aggravated felons" and are not lawful permanent residents. Prohibit use of this procedures for minors, the mentally ill, noncitizens who claim a fear of persecution or torture upon return to their countries of origin, or noncitizens with significant ties to the United States.	Reaffirm recommendation. Overuse of administrative removal with little oversight and extremely limited judicial review continues to raise serious due process concerns.	1-IV.D.1 ES-23 UD 1-IV.D.1	Existing, Regulation, Legislation Short Term Both
Authorize the immigration courts to review DHS determinations that the conviction was for an aggregated felony and that the noncitizen is not in any of the protected categories listed above.	Reaffirm recommendation. In light of the continued uncertainty about the definition of "aggravated felony" and the continued use of administrative removal even for persons in protected categories, additional oversight of DHS determinations is needed to ensure proper and uniform application of the definition.	1-IV.D.1 ES-23 UD 1-III.E.1, IV.D.1	Existing, Regulation, Legislation Short Term Both

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Part 1: Department of Homeland Security (continued)			
Eliminate mandatory detention provisions or narrow them to target persons who are clearly flight risks or pose a threat to national security, public safety, or other persons.	Reaffirm recommendation.	1-IV.E.1 ES-25 UD 1-IV.D.2	Legislation Short Term Both
In any event, DHS should implement policies designed to avoid detention of persons who are not subject to mandatory detention, are not flight risks, and do not pose a threat to national security, public safety or other persons.	Reaffirm recommendation.	1-IV.E.1 ES-25 UD 1-IV.D.2	Existing Long Term Both
Curtail the use of the use of expedited removal for noncitizens apprehended at the border or within the United States by eliminating expedited removal for individuals who are already in the United States, unaccompanied minors, and the mentally ill.	Reaffirm recommendation. DHS should continue to refrain from using expedited removal against unaccompanied minors. Consider amending the statute so that unaccompanied minors expressly are exempt from expedited removal by statute. Provide training to DHS attorneys and officers that expedited removal should not be used against individuals already in the United States, unaccompanied minors, and the mentally ill.	1-IV.D.2 ES-23 UD 1- III.D.1, IV.D.2	Legislation Short Term Both
Further curtail the use of the use of expedited removal for noncitizens apprehended at the border or within the United States by permitting DHS officers to issue expedited removal orders only if they determine that individuals lack facially value travel documentation.	Reaffirm recommendation. We further recommend that Congress amend the statutory provision to include language expressly granting more authority to immigration judges, and less to enforcement officers.	1-IV.D.2 ES-23 UD 1-III.H.5, IV.D.2	Legislation Short Term Both

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Part 1: Department of Homeland Security (continued)			
Ensure proper treatment during expedited removal proceedings of noncitizens who fear persecution or torture upon return to their countries of origin by improving supervision of the inspection process at ports of entry and border patrol stations, including by expanding the use of videotaping systems to all major ports of entry and border patrol stations.	Reaffirm recommendation. Headquarters and local offices should commit to addressing the fact that many noncitizens have experienced trauma. Provide training to CBP officers to teach interviewing techniques geared toward traumatized individuals. Make appropriate inspections, including sensitivity to traumatized noncitizens, part of the evaluation of CBP officers.	1-IV.D.4 ES-24 UD 1-IV.D.2	Existing, Regulation Short Term Both
In addition, make a copy of any videotape or other recording of the interview of a noncitizen during expedited removal proceedings available to such noncitizen and his or her representative for use in his or her defense from removal.	Reaffirm recommendation. Opportunities for challenging expedited removal remain extremely limited. It is essential that noncitizens ordered removed through those procedures have access to all information relevant to their defense.	1-IV.D.4 ES-24 UD 1-III.D.1, IV.D.2	Existing, Regulation Short Term Both
Curtail the use of the use of expedited removal for noncitizens apprehended at the border or within the United States by expanding judicial review (through habeas proceedings) to allow a court to consider whether the petitioner was properly subject to expedited to removal provisions and to review challenges to adverse credible fear determinations.	Reaffirm recommendation. The lack of judicial review of expedited removal orders continues to be cause for significant concern, particularly in light of the expanded use of expedited removal proceedings. And the Third Circuit's recent decision in *Castro v. DHS* indicates that the limited habeas review currently authorized by statute does not provide protection for most individuals ordered removed through expedited removal proceedings.	1-IV.D.2 ES-23 UD 1-III.D.1, IV.D.2	Legislation Short Term Both

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Part 1: Department of Homeland Security (continued)			
Improve and expand alternatives to detention and use them only for persons who would otherwise be detained. Review current alternatives to detention programs to determine whether they constitute custody for purposes of the INA; if so, DHS could extend these programs to mandatory detainees who do not pose a danger to the community or a national security risk and for whom the risk of flight, within the parameters of the programs, is minimal.	Reaffirm recommendation. Implement a true civil detention model by revising detention standards to fit the immigrant population, and ensure the standards apply to all people in DHS detention regardless of the type of detention facility. Continue to refine the Risk Classification Assessment to account for more factors to avoid the overuse of both detention and supervised releases.	1-IV.E.2 ES-25 UD 1- III.G.2, IV.E	Existing Long Term Both
Grant parole where asylum seekers have established their identities, community ties, lack of flight risk, and the absence of any threat to national security, public safety, or other persons. In addition, conduct parole determinations as a matter of course for asylum seekers who have completed the credible fear screening.	Reaffirm recommendation. Provide training programs for immigration judges and ICE officers regarding the factors that need to be considered in making parole decisions. Implement a policy favoring conditional parole without payment of bond. Instruct immigration judges and ICE officers that they must consider ability to pay in cases where bond is required for release. Codify the core requirements of the 2009 Parole Directive into regulations or, in the alternative, ensure that the 2009 Parole Directive remains in full force and must be followed.	1-IV.E.3 ES-25 UD 1-III.A.3, IV.D.2	Existing Short Term Both
Adopt policies to avoid detaining noncitizens in remote facilities located far from family members, counsel, and other necessary resources.	Reaffirm recommendation.	1-IV.E.4 ES-25 UD 1-III.G.1, IV.E	Existing, Regulation Long Term Both
Upgrade DHS's data systems and improve processes to permit better tracking of detainees within the detention system, and improve compliance with ICE's National Detention Standard for Detainee Transfers.	Reaffirm recommendation. ICE's Online Detainee Locator System is a welcome development, but could be improved to include more timely information. Train ICE officers that it is their obligation to inform the attorney on record of the immigrant's location.	1-IV.E.4 ES-25 UD 1-III.G.1, IV.E	Existing Long Term Both

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Part 1: Department of Homeland Security (continued)			
[No recommendation]	Adopt a presumption against detention, particularly in the case of families, children, and asylum seekers. Where detention is required, it must not be lengthy. Effort must be taken by government to satisfactorily address impediments to the release of families and children. Establish and adhere to clear standards of care that include unique provisions for families and children that do not follow a penal model.	UD 1-III.G.4, IV.E	Existing, Regulation Short Term Both
[No recommendation]	Only those families who must as a matter of law be detained, should be placed in a family residential center ("FRC").	UD 1-III.G, IV.E	Existing Short Term Both
[No recommendation]	The FRC facility should be designed and operated as a non-secure facility where the families' movement within the facility and on the grounds is left largely to the discretion of the parents.	UD 1-III.G.4, IV.E	Existing, Regulation Short Term Both
[No recommendation]	Families should be transferred to the community at the earliest opportunity permitted by law. In instances where families have no community ties, the time in the FRC should be used to find suitable community-based placements at the earliest opportunity. ICE should also consider resuming the pre-release casework effort that was in place to expedite this effort.	UD 1-III.G.3, III.G.4, IV.E	Existing Short Term Both
[No recommendation]	All other families in detention should be released to the community. Newly intercepted families should remain in the community. Only those parents objectively assessed by means of a validated risk assessment, normed specifically for this population to require some additional assurance for compliance with one or more conditions should be subject to a monetary requirement. Alternatively, only those parents objectively assessed by means of a risk assessment, normed specifically for this population to require some degree of supervision for compliance with reporting requirements should be assigned to electronic monitoring.	UD 1-III.G.4, III.G.5, III.G.6, IV.E	Existing, Regulation Short Term Both

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Part 1: Department of Homeland Security (continued)			
[No recommendation]	Provide meaningful federal oversight of detention operations, through an on-site presence at facilities of federal officials authorized to intercede quickly and as often as necessary, and ensure that effective complaint mechanisms are in place. Track performance and outcomes and make reliable information readily available to the public. Put into place enforcement mechanisms to ensure accountability.	UD 1-III.G.2, IV.E	Existing, Regulation Long Term Both
[No recommendation]	Ensure that: (i) the federal immigration policies and practices of separating minor children from their parents at the border cease and not be reinstated; (ii) any separation of a child and a parent shall occur based on objective evidence, excluding the fact of unauthorized entry, of child endangerment applying well-defined criteria with due process protections for parent and child; and (iii) children who have already been separated from their parents under such policies have a safe and expedient procedure for being reunified with parents consistent with ensuring that the parents' and children's individual and independent legal claims are fully protected.	UD 1-III.H.3, IV.E	Existing Short Term Both
[No recommendation]	Rescind the policies of prosecuting all individuals who enter the United States without authorization at the southern border for the misdemeanor offense of illegal entry pursuant to 8 U.S.C. §1325. End the practice of expedited mass prosecution of immigrants. Assure that every defendant charged with illegal entry is represented by counsel who has had an adequate opportunity to consult with the defendant, and that any guilty plea is knowing, intelligent, and voluntary. Exercise prosecutorial discretion and refrain from prosecuting asylum seekers for the offense of illegal entry.	UD 1-IV.E	Existing Short Term Both
[No recommendation]	Rescind the Interim Final Regulation "Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims" published on November 9, 2018. Ensure that all asylum seekers, regardless of manner of entry, are afforded their full right under the law to pursue asylum and any other benefits or humanitarian protections.	UD 1-III.H.4, IV.E	Existing Short Term Both

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Part 1: Department of Homeland Security (continued)			
[No recommendation]	Uphold the asylum laws as currently established in the Immigration and Nationality Act and rescind the November 8, 2018, Presidential Proclamation that would deny asylum eligibility pursuant to INA sections 212(f) and 215(a) to those who enter the United States outside of an official Port of Entry.	UD 1-III.H.4, IV.E	Existing Short Term Both
Part 2: Immigration Judges/Courts			
[No Recommendation]	Consistent with our recommendations in Part 6 of the 2010 Report and Part 6 of this Update Report, we recommend that immigration courts be transferred into an independent court system established under Article I of the Constitution.	UD 2-I, II.B, IV.A	Legislation Long Term Restructuring
[No Recommendation]	Minimize political interference with immigration court operations and proceedings.	UD 2-I, III.A., IV.A	Existing Short and Long Term Both
[No Recommendation]	Rescind recent case production quotas and time-based metrics used to evaluate an immigration judge's performance or, at a minimum, carefully monitor the use of such metrics to determine the impact they have on judicial independence and due process.	UD 2-III.A.2, IV.A	Existing Short Term Both
[No Recommendation]	Enact legislation that expressly restores administrative closure and termination as tools that immigration judges may use in cases involving vulnerable populations, including unaccompanied children and the mentally impaired, or as necessary where justice requires.	UD 2-III.A.3, IV.A	Legislation Short Term Both

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Part 2: Immigration Judges/Courts (continued)			
Adopt a new, single, consolidated code of conduct for immigration judges based on the ABA Code of Judicial Conduct, tailored to the immigration adjudication system.	EOIR published the Ethics and Professionalism Guide for Immigration Judges in 2011. Our updated recommendation is to study the effects of the Ethics and Professionalism Guide, determine whether there are any conflicts with state judicial and ethical Codes of Conduct and, if so, consider who decides which standards apply to immigration judges sitting in that state. We further recommend studying whether and how the Ethics and Professionalism Guide intersects and interacts with new performance standards implemented since 2017.	2-IV.B.2 ES-29 UD 2-III.A.2, IV.A	Existing Short Term Both
Establish a new, more independent and transparent system to manage complaints and the disciplinary process by establishing a new office in EOIR that would segregate the disciplinary function from other supervisory functions, creating and following publicly available procedures and guidelines for complaints and discipline, fully implementing a formal right of appeal/review for adverse disciplinary decisions, and allowing public access to statistical or summary reporting of disciplinary actions (individual disciplinary records themselves would not be made public).	Reaffirm recommendation. The disciplinary process should be more transparent and independent.	2-IV.B.4 ES-29 UD 2-III.A.2, IV.A	Legislation Short Term Incremental
Implement GAO recommendations that EOIR develop and maintain appropriate procedures to accurately measure case completion, identify and examine cost-effective options for acquiring the data, and acquire the necessary expertise to perform useful and reliable analyses of immigration judges' decisions.	Reaffirm recommendation. We recommend that improved data be collected to monitor the performance of immigration judges and immigration courts.	2-IV.C.5 ES-29 UD 2-III.A.2, IV.A	Existing Short Term Incremental

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Part 2: Immigration Judges/Courts (continued)			
Implement judicial model performance reviews for immigration judges based on the ABA's Guidelines for the Evaluation of Judicial Performance and the Institute for Advancement of the American Legal System proposed model for judicial performance.	Reaffirm recommendation. We recommend adoption of a more robust and transparent review process for immigration judges, where immigration judges are evaluated not only on their command of substantive law and procedural rules, but also impartiality and freedom from bias, clarity of oral and written communications, judicial temperament, administrative skills and appropriate public outreach. We expressly oppose the implementation of strict, numerical performance metrics, such as those recently adopted by the administration, as a basis for evaluating immigration judge's job performance, as such an approach is highly arbitrary, likely to undermine judicial independence, and poses a significant threat to due process and the legitimacy of immigration court proceedings.	2-IV.B.3 ES-29 UD 2-III.A.2, IV.A	Regulation Short Term Both
Encourage immigration courts to hold prehearing conferences as a matter of course in order to narrow the issues and provide clearer guidance to noncitizens and their counsel on what evidence and testimony will be important.	Reaffirm recommendation. Use of case management tools, such as prehearing conferences, should be encouraged to improve efficiency of court proceedings, and immigration judges should be provided with the ability to exercise their discretion to fairly and efficiently manage their dockets.	2-IV.C.7 ES-30 UD 2-III.A.3, IV.A	Existing Short Term Both
In hiring immigration judges, add questions on applications, interviews and reference checks designed to evaluate a candidate's background, judicial temperament, and ability to demonstrate cultural sensitivity and treat all persons with respect.	Reaffirm recommendation. We also highlight the need for the hiring process to be insulated from the political process as much as practical. Finally, in conjunction with the overarching recommendation that the immigration courts be moved into an independent Article I court, we recommend that to the extent feasible, as much hiring as possible should be completed within the strictures of the new Article I court.	2-IV.A.1 ES-29 UD 2-III.B.1, IV.B	Legislation or Regulation Short Term Both
Allow more public input in the hiring process by permitting professional organizations to participate in screening candidates who reach final levels of consideration.	Reaffirm recommendation and reiterate that public involvement will ward against politicized hiring and make the hiring process more transparent.	2-IV.A.1 ES-29 UD 2-III.B.1, IV.B	Legislation or Regulation Short Term Incremental

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Part 2: Immigration Judges/Courts (continued)			
[No Recommendation]	Until such time as an Article I immigration court can be established, we recommend that DOJ consider establishing standards and procedures for the Attorney General certification process through rulemaking. This would include procedures providing notice and an opportunity for the parties to brief the specific legal questions the Attorney General intends to review, and for amici to weigh in, before a decision is rendered. We further recommend that the Attorney General exercise his or her authority under 8 C.F.R. § 1003.1(h)(1) sparingly to clarify, not rewrite, immigration law and to refrain from using it as a political or ideological tool.	UD 2-III.B.2, IV.B	Regulation or Legislation Short Term Incremental
Limit use of video conferencing to procedural matters in which the noncitizen has given consent.	Reaffirm recommendation. VTC should be limited to use in non-substantive matters where the noncitizen has consented to its use.	2-IV.C.6.b ES-30 UD 2-III.B.3, IV.B	Existing Short Term Both
[No Recommendation]	Improve VTC technology and implementation to limit disruptions, improve reliability, and increase engagement in proceedings. At a minimum, VTC technology should reliably establish an uninterrupted connection between the court and the remote location broadcasting the respondent (often a DHS-affiliated detention facility), and provide the respondent with a more complete view of the courtroom so that he or she is better able to understand the proceedings. Additionally, respondents should be provided with a quiet location from which to engage with the Court. EOIR should further be attentive to the fact that use of VTC to adjudicate immigration removal proceedings is likely to disproportionately impact disadvantaged detained populations and should take precautions to ensure due process is met in those circumstances.	UD 2-III.B.3, IV.B	Existing Long Term Both
[No Recommendation]	EOIR should enhance its VTC program by collecting more reliable data on VTC hearings and using the information to assess any effects of VTC on hearing outcomes.	UD 2-III.B.3, IV.B	Existing Short Term Both

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Part 2: Immigration Judges/Courts (continued)			
[No Recommendation]	Explore whether VTC might be effectively implemented in non-substantive hearings involving non-detained respondents seeking relief through other governmental agencies without the immigration court's direct involvement, but who nonetheless must appear in periodic status conferences before the immigration court.	UD 2-III.B.3, IV.B	Existing Short Term Both
[No Recommendation]	VTC should not be used for unaccompanied children, especially detained children. To the extent ORR facilities use VTC for proceedings involving children in ORR custody, such use of VTC should, at a minimum, be limited to cases where the child is represented and in which both the child and counsel consent to its use; if the child is unrepresented, VTC should not be used.	UD 2-III.B.3, IV.B	Existing Short Term Both
[No Recommendation]	Increase efforts to identify, certify, and expand access to qualified interpreters in immigration proceedings, particularly interpreters for uncommon languages and indigenous regional dialects, so that noncitizens' due process rights are protected.	UD 2-III.B.5, IV.B	Existing Short Term Both

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Part 2: Immigration Judges/Courts (continued)			
Request additional immigration judges (approximately 100)	The 2010 recommendation is no longer applicable since more than 100 additional immigration judges have been hired since 2010. While we recognize the tremendous need for additional resources in the immigration court system, we support hiring additional immigration judges, beyond the level currently authorized by Congress, only if accompanied by significant reforms designed to ensure adequate and non-politicized vetting of immigration judge candidates, enhanced training of immigration judges, sufficient supporting resources, and increased independence of immigration judges. Accordingly, we recommend that additional immigration judges (beyond the level currently authorized by Congress) be hired only under either a restructured Article I court as discussed in Part 6 of this Update Report, or, at a minimum, in conjunction with a concrete plan to adopt and implement the reforms addressed in detail in this Part of the Update Report which strive to promote judicial independence, ensure due process, and provide the necessary procedures, resources, and infrastructure (including law clerks and courtrooms) to support immigration judges and immigration courts in enhancing their independence, fairness, efficiency, and professionalism.	2-IV.C.1 ES-28 UD 2-III.C.1, IV.C	Legislation Short and Long Term Both
Give immigration judges statutory protection against being removed or disciplined without good cause, in order to protect them from retribution for engaging in ethical and independent decision making.	Reaffirm recommendation, but reiterate that as many of the immigration judge positions as possible should be filled within the context of the Article I court.	2-IV.A.2 ES-30 UD 2-III.C.1, IV.C	Legislation Short Term Both
Increase number of law clerks to increase ratio to one clerk per judge, and increase number of support personnel.	Reaffirm recommendation.	2-IV.C.1 ES-28 UD 2-III.C.2, IV.C	Legislation Short Term Both

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Part 2: Immigration Judges/Courts (continued)			
Increase administrative time available to immigration judges to allow increased participation in live training and opportunities to interact with other immigration judges on their courts.	Reaffirm recommendation, and stress the importance of judges speaking to one another regarding the types of issues faced in their cases, as well as any developments relevant to their handling of cases.	2-IV.C.3 ES-28 UD 2-III.C.1, IV.C	Existing Short Term Both
Provide additional opportunities for training of immigration judges, including training in assessing credibility, identifying fraud, changes to U.S. asylum and immigration law, and cultural sensitivity and awareness; provide sufficient funding to permit all judges to participate in regular, in-person trainings on a wide range of topics in immigration law; and designate an administrator to facilitate communication among immigration judges.	Reaffirm recommendation. In addition to the four issues listed in the 2010 recommendation, we also recommend that there be additional trainings and/or presentations by non-lawyers, such as psychiatrists and social workers, so that immigration judges have an understanding of the psychological and social effects of their decisions, and an increased awareness of implicit bias. These additional trainings may allow immigration judges to avoid desensitization and to gain an understanding of the potential impact of secondary trauma (also called vicarious trauma).	2-IV.C.4 ES-28 UD 2-III.C.2, IV.C	Existing Short Term Both
Significantly increase the number of Assistant Chief Immigration Judges to permit a more appropriate ratio of judges to supervisors, and expand their deployment to regional courts.	EOIR added nine ACIJs, most recently in October 2018. Because the influx of these new ACIJs is relatively recent, we recommend studying the effect of the increase in ACIJs, and if those results are positive, adding more ACIJs to regional courts. Ideally adding new ACIJs will occur under an Article I court. We also recommend that ACIJs handle cases, rather than simply serving as supervisors, so that they have a better understanding and appreciation of the challenges faced by immigration judges.	2-IV.B.1 ES-29 UD 2-III.C.2, IV.C	Existing Short Term Incremental
Require more formal, reasoned written decisions that are clear enough to allow noncitizens and their counsel to understand the bases of the decision and to permit meaningful BIA and appellate review.	Reaffirm recommendation.	2-IV.C.2 ES-30	Existing Short Term Both
[No Recommendation]	EOIR should fully implement its ECAS system across all immigration courts.	UD 2-III.C.3, IV.C	Existing Short Term Incremental

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Part 2: Immigration Judges/Courts (continued)			
Give priority to completing the rollout of digital audio recording systems to facilitate fair and efficient proceedings.	Digital audio recording systems were rolled out in 2010, shortly after the 2010 Report was published. This recommendation is therefore moot.	2-IV.C.6.A ES-30	
Part 3: Board of Immigration Appeals			
Require three member panel review in all non-frivolous merits cases that lack obvious controlling precedent. Allow single-member review for purely procedural motions and motions unopposed by DHS.	Reaffirm recommendation.	3-IV.A ES-32 UD 3-II, III.A	Regulation Short Term Incremental
Extend deadline for issuance of single-member decisions from 90 to 180 days from receipt of appeal (i.e., the same deadline as for panel review).	Reaffirm recommendation for non-detained cases.	3-IV.A ES-33 UD 3-II, IIIA	Regulation Short Term Incremental
Finalize 2008 proposed rule that would make Affirmances Without Opinion discretionary rather than mandatory. Written decisions should address all non-frivolous arguments raised by the parties, thus providing sufficient information to facilitate review by federal appeals courts, to allow participants to understand the Board's decision, and to promote their confidence in the fairness of the decision.	Reaffirm recommendation. We also recommend the Board utilize more oral arguments, which are still extremely rare.	3-IV.B ES-32 UD 3-I, II, III	Regulation Short Term Incremental
[No Recommendation]	We recommend that, as part of its amicus briefing requests, EOIR post all underlying decisions at issue to provide an opportunity for meaningful public comment and briefing on the case before the Board renders its decision.	UD 3-III.A, III.E	Existing Short Incremental

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Part 3: Board of Immigration Appeals (continued)			
Restore the Board's ability to conduct de novo review of immigration judge factual findings and credibility determinations.	Reaffirm recommendation.	3-IV ES-32 UD 3-II	Regulation Short Term Incremental
Issue more precedential decisions, expanding the body of law to guide immigration courts and practitioners.	Reaffirm recommendation. Additionally, we recommend that the Board establish a process for reconsidering a BIA precedent decision that has been overturned by one or more circuit courts, when presented with an appropriate case.	3-III.B ES-32 UD 3-I, II, III.B	Existing Short Term Incremental
Regulations should continue to require that the full Board authorize designation of an opinion as precedent.	Reaffirm recommendation. The 2008 proposed rule has not been implemented, and we continue to believe that this provision should not be finalized. Careful consideration by the Board as a whole as to whether a particular opinion offers needed clarification in the law is a necessary step to fostering greater uniformity in immigration adjudication.	3-III.B ES-33 UD 3-III.B.	Regulation Short Term Both
[No Recommendation]	We recommend that EOIR increase its efforts to hire Board members from diverse professional backgrounds, including practitioners with experience representing noncitizens and individuals reflecting a broader mix of racial, ethnic, gender, gender identity, sexual orientation, disability, religious, and geographically diverse backgrounds.	UD 3-III.C	Existing Short Incremental
Increase resources available to the Board, including additional staff attorneys and additional Board members.	Reaffirm recommendation.	3-IV.C ES-34 UD 3-I, II, III	Legislation Short Term Incremental
Apply new code of conduct proposed for immigration judges, based on the ABA Code of Judicial Conduct, to Board members as well.	EOIR announced in 2011 its publication of the Ethics and Professionalism Guide for Immigration Judges. We recommend that the guide apply to Board Members as well as immigration judges.	3-IV ES-34 UD 3-II	Existing Short Term Both
[No Recommendation]	Continue to implement an integrated, system-wide electronic filing and case management system, by expanding the current pilot program nationwide. Implementing this system will require adequate funding from Congress.	UD 3-III.D	Existing Long Term Incremental

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Part 3: Board of Immigration Appeals			
[No Recommendation]	We recommend that DOJ amend the certification regulation at 8 C.F.R. § 1003.1(h)(2) to establish a procedure for notice of intent by the Attorney General to certify a case that provides for an opportunity for public comment and briefing on the case before a decision is rendered and for publication of any underlying decisions at issue so that such opportunity for public comment and briefing is meaningful.	UD 3-III.E	Regulations Short Incremental
Make non-precedential opinions available to noncitizens and their representatives.	Reaffirm recommendation.	3-III.F ES-32 UD 3-III.F	Existing Short Term Incremental
[No Recommendation]	We recommend that EOIR amend its regulations to: (a) eliminate the automatic termination of voluntary departure when an applicant petitions for judicial review under 8 C.F.R. § 1240.26(i); and (b) automatically stay implementation of a removal or deportation order effective either until an order from the circuit court ruling on a motion or request for a stay, or the expiration of the appeal period, whichever is earlier.	UD 3-III.F	Regulations Short Term Incremental
[No Recommendation]	The BIA Practice Manual should give Board Members authority to relax the timelines for filing appeals with the BIA for petitioners in detention or without representation, in the interest of fairness. For these same reasons, we also encourage the Board to excuse the lack of a timely brief for pro se litigants.	UD 3-III.F	Existing Short Term Incremental
Part 4: Judicial Review			
Enact legislation to restore courts' authority to review discretionary decisions under the abuse of discretion standard in effect prior to 1996 legislation.	Reaffirm recommendation.	4-IV.A. ES-36 UD 4-II, IV	Legislation Short Term Both

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Part 4: Judicial Review			
Require that courts apply a presumption in favor of judicial review and specifically reject attempts to insulate more and more actions by labeling them as discretionary.	Recommend that Congress enact legislation confirming that courts of appeals have jurisdiction to review BIA decisions regarding sua sponte reopening.	4-IV.A. ES-36 UD 4-II, III, IV	Legislation Short Term Both
Amend the INA to permit the courts of appeals to remand cases for further fact finding under the standard provided in the Hobbs Act for review of other agency actions — i.e., where "the additional evidence is material" and "there were reasonable grounds for failure to adduce the evidence before the agency." *See* 28 U.S.C. § 2347(c).	Reaffirm recommendation.	4-IV.B ES-36 UD 4-II, IV	Legislation Long Term Both
Extend the current 30-day deadline to file a petition for review with the court of appeals to 60 days, with the possibility of a 30-day extension where the petitioner is able to show good cause or excusable neglect.	Reaffirm recommendation. In addition, courts of appeals should consider enacting rules similar to the Ninth and Second Circuits' automatic temporary stays by operation of law on filing a stay motion.	4-IV ES-37 UD 4-II, III, IV	Legislation Short Term Both
Amend BIA regulations to require each final removal order in which the government prevails to include notice of the right to appeal, the applicable circuit court, and the deadline for filing an appeal.	Reaffirm recommendation. In addition, we recommend that the final removal order inform petitioners of the need to file a motion for stay of removal.	4-IV ES-37 UD 4-II, IV	Regulation Both Both
[No recommendation]	Consider establishing or expanding pro bono programs in the courts of appeals to provide pro bono representation to pro se appellants in immigration cases, where such representation would assist the court in disposing of the appeal.	UD 4-III, IV	Existing Short and Long Term Both

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Part 5: Representation			
Establish a right to government-funded counsel in removal proceedings for indigent noncitizens who are potentially eligible for relief from removal and cannot otherwise obtain representation. Apply this right at all levels of the adjudication process, including immigration court adjudications, appeals at the BIA and federal appellate courts, and habeas petitions challenging expedited removal.	Reaffirm recommendation and further support the appointment of counsel at federal government expense to represent all indigent persons in removal proceedings before EOIR, and if necessary to advise such individuals of their right to appeal to the federal Circuit Courts of Appeals. Unless and until the federal government provides counsel for all indigent persons in removal proceedings before EOIR, we encourage state, local, territorial, and tribal governments to provide in removal proceedings legal counsel to all indigent persons in removal proceedings in their jurisdictions who lack pro bono counsel or the financial means to hire private counsel, prioritizing government-funded counsel for detained individuals in removal proceedings.	5-IV.A.1 ES-40 UD 5-I, III.A, IV.A	Legislation Long Term Both
Provide representation at government expense for unaccompanied minors and noncitizens with mental disabilities and illnesses, at all stages of the adjudication process, whether or not the proceeding may necessarily lead to removal.	Reaffirm recommendation. We further encourage evaluation of current gaps in coverage for providing representation to vulnerable noncitizens and support adoption of comprehensive nationwide programs to provide more uniform, complete representation to all noncitizens in vulnerable populations, including all noncitizen children and immigrants suffering from severe mental disabilities or illnesses. Finally, we recommend that Congress pass laws to stabilize and protect programs that provide access to counsel to vulnerable populations to avoid their disruption (through defunding or other executive action) in volatile political climates.	5-IV.A.1 ES-40 UD 5-III.A.2, III.A.3	Legislation Long Term Both
[No recommendation]	EOIR should activate the National Qualified Representative Program ("NQRP") at every detained-docket immigration court as soon as practicable. Further, consistent with the ABA Model Rules of Professional Conduct, NQRP-eligible noncitizens should be provided with a guardian ad litem to assert the noncitizen's rights in cases in which counsel may be subject to conflicting instructions or ethical obligations.	UD 5-III.A.2, III.A.3	Existing Long and Short Term Incremental

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Part 5: Representation (continued)			
Where representation at government expense is required (as proposed above), require it to be provided by an attorney in proceedings raising substantial questions of law, such as appeals to the BIA where a significant legal issue is presented, all appeals to the federal appellate courts, and in the preparation of habeas petitions challenging expedited removal orders. In other matters, in addition to attorneys, second-level accredited representatives would continue to be able to represent the noncitizen.	Reaffirm recommendation.	5-IV.A.1 ES-40 UD 5-III.A, IV.A	Regulation Long Term Both
Eliminate the "no expense to the Government" limitation of section 292 of the INA in order to limit controversy over whether the provision of government-funded representation is permitted under current law.	Reaffirm recommendation.	5-IV.A.1 ES-40 UD 5-III.A.3	Legislation Long Term Both
Expand and improve the EOIR pro bono program to facilitate and encourage attorney participation.	Reaffirm recommendation.	5-IV.B.2c ES-42 UD 5-III.B.1, IV.B.1	Existing Short Term Incremental
[No recommendation]	Immigration judges should facilitate pro bono representation for vulnerable pro se respondents. More broadly, immigration judges should promote justice by encouraging lawyers to provide pro bono legal services in the immigration setting, consistent with the ABA Model Code of Judicial Conduct.	UD 5-III.B.1, IV.B.1	Existing Short Term Incremental
[No recommendation]	Circuit Courts should adopt programs similar to the Ninth Circuit's robust pro bono program and immigration resource library (including an immigration law outline and additional assistance through the Immigration Legal Resource Center) to assist pro se litigants in immigration appeals.	UD 5-III.B.1, IV.B.1	Existing Short Term Incremental

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Part 5: Representation (continued)			
Expand the Legal Orientation Program ("LOP") to provide services for all detainees.	Reaffirm recommendation. LOP should be Congressionally mandated and expanded to additional facilities to provide greater coverage to those in detention.	5-IV.A.2 ES-4 UD 5-III.B.2, IV.B.2	Legislation Long Term Both
Expand LOP in order to reach non-detained noncitizens in removal proceedings.	Reaffirm recommendation. Congress should statutorily authorize and increase funding of the ICH which will allow for expanded access to legal guidance for non-detained immigrants.	5-IV.A.2 ES-4 UD 5-III.B.2, IV.B.2	Legislation Long Term Both
Modify the LOP's current screening system so that it screens all indigent persons (not only detainees) in removal proceedings and refers them to individuals or groups who can represent them in adversarial proceedings, using a set of standards developed by EOIR. The system would also screen noncitizens to determine whether they belong to one of the groups entitled to representation. Qualifying cases could be referred to charitable legal programs or pro bono counsel. Where these services were unavailable, government-paid counsel would be appointed.	Reaffirm recommendation.	5-IV.A.3 ES-41 UD 5-III.B.2, IV.B.2	Legislation or Regulation Long Term Both
Establish an administrative structure for the enhanced LOP to enable it to provide counsel at government expense for noncitizens in some cases.	Reaffirm recommendation and stress that the expansion of LOP should complement, rather than detract from the overarching goal of direct government-funded representation to all indigent immigrants who lack pro bono counsel or the financial means to hire private counsel.	5-IV.A.3 ES-41 UD 5-III.B.2, IV.B.2	Legislation or Regulation Long Term Both
Have EOIR create a pro se litigant guide in various languages and distribute it to court clerks, charitable organizations involved in immigration matters, community organizations, pro bono providers, and churches.	Reaffirm recommendation.	5-IV.B.2.b ES-41 UD 5-IV.B.2	Regulation Short Term Incremental

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Part 5: Representation (continued)			
Permit recognized nonprofit agencies to charge "reasonable and appropriate fees," as opposed to "nominal charges," for their services.	EOIR should monitor progress under the new regulations relating to recognized organizations and accredited representatives program to ensure they are meeting the dual goals of improving access to qualified non-lawyer representation and protecting non-citizens from unscrupulous practices.	5-IV.B.2.a ES-41 UD 5-III.B.3, IV.B.3	Existing Short Term Incremental
[No recommendation]	To further deter unscrupulous practices and protect against inadequate, even if well-intentioned, legal guidance and representation, we recommend that EOIR require recognized organizations to have structures in place to promote attorney supervision, mentoring, and support. We also recommend that accredited representatives be required to participate in continuing education relating to immigration law (preferably requiring participating in at least two legal trainings annually).	UD 5-III.B.3, IV.B.3	Existing Short Term Incremental
Strictly enforce legal prohibitions against the unauthorized practice of law, and put in place mechanisms to ensure that noncitizens are not deprived of substantive and procedural rights as a consequence of the unauthorized practice of law.	Reaffirm recommendation. EOIR should continue to investigate and prosecute fraud and unauthorized practice through various mechanisms, including the Fraud and Abuse Prevention Program, the departmental working group on notarios, and the Attorney Discipline System. EOIR should issue the rule concerning ineffective assistance of counsel in immigration proceedings. Additionally, we recommend the creation of a centralized reporting system to identify and publicize those engaged in fraud along with the publication of a guide to assist victims of fraud with information, support, and services.	5-IV.B.1.b. ES-42 UD 5-III.C.1; IV.C.1	Existing Short Term Both
Have courts and immigration officials continue to follow EOIR's Fraud Program guidelines, monitor immigration cases for indications that fraudulent operators are at work, and prosecute them to the full extent of the law.	Reaffirm recommendation.	5-IV.B.1.b. ES-42 UD 5-III.C.1; IV.C.1	Existing Short Term Both

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Part 5: Representation (continued)			
Require immigration judges to consult with local bar associations and other local stakeholders in determining the criteria for inclusion on EOIR's pro bono service providers list.	Given that EOIR published a final rule, our 2010 Recommendation suggesting that immigration judges take certain action in the interim is moot.	5-IV.B.2.d ES-42 UD 5-III.C.2; IV.C.2	Regulation Short Term Incremental
Amend EOIR's Rules of Conduct to allow for civil monetary penalties to be imposed by immigration judges against both private and government attorneys.	Reaffirm recommendation.	5-IV.B.1.a ES-42 UD 5-III.C.3; IV.C.3	Regulation Short Term Incremental
Part 6: System Restructuring			
Create Article I court with trial and appellate divisions, headed by Chief Trial Judge and Chief Appellate Judge, respectively. President appoints Chief Appellate Judge, other appellate judges, Chief Trial Judge, and possibly Assistant Chief Trial Judges, with advice and consent of Senate, from among persons screened and recommended by a Standing Referral Committee. Other trial judges appointed by Chief Trial Judge or Assistant Chief Trial Judges, also using Standing Referral Committee. Fixed terms of 12-15 years for appellate judges, 8-10 years for trial judges. Judges removable by appointing authority only for incompetency, misconduct, neglect of duty, malfeasance, or disability. Existing judges can serve out the remainder of the new fixed terms (which are deemed to have begun at the time of their prior appointment to current positions) and are eligible.	Reaffirm recommendation in part. We support the creation of an Article I court system for the entire immigration judiciary, but suggest that the specific features regarding qualifications, selection, tenure, removal, administration, supervision, discipline and judicial review to be revisited in conjunction with other stakeholders; provided that, with respect to judicial review, final decisions of the new court should be subject to review in regional federal courts of appeals, with the scope of review being no less broad than under current law regarding review of BIA decisions.	6-III.A.1 ES-9, 43 UD 6-III, IV, V	Legislation Long Term Restructuring

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Part 6: System Restructuring			
In the alternative, if Article I court is not established, create independent agency for both trial and appellate functions.	We now view an Article I court system for the entire immigration judiciary as much superior to an independent agency in the Executive Branch.	6-III.A.2 ES-43 UD 6-IV.B	Legislation Long Term Restructuring

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