



Limited-Scope Inspection and Review of Video Teleconference Use for Immigration Hearings



EVALUATION AND INSPECTION DIVISION

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EXECUTIVE SUMMARY

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Introduction

Pursuant to the Immigration and Nationality Act, immigration removal proceedings can be conducted by video teleconference (VTC), and the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR), which adjudicates immigration cases, has a longstanding practice of holding some hearings via VTC. In 2019, EOIR began conducting VTC hearings at two Immigration Hearing Facilities (IHF)—also known informally as “tent courts”—operated by the U.S. Department of Homeland Security (DHS) in Brownsville and Laredo, Texas, to process individuals subject to the Migrant Protection Protocols (MPP). In these settings, individuals seeking entry into the United States (referred to as “respondents”) participate in hearings from the IHFs while EOIR immigration judges connected via a VTC system from an immigration court in another location.

The Office of the Inspector General (OIG) initiated this inspection and review in February 2020. Our objectives included assessing the (1) policies and procedures pertaining to EOIR’s use of VTC systems, (2) quality of the VTC broadcasts, and (3) potential effects of the use of VTCs on immigration hearings.

In March 2020, the OIG conducted fieldwork on the use of VTCs at the IHF in Brownsville. Later that month, due to the coronavirus pandemic, IHF usage was suspended and did not resume for MPP operations until February 2022. Separately, EOIR increased its capacity to conduct virtual hearings through measures including deployment of a Webex platform that allows for greater remote participation. Also due to the pandemic, the OIG suspended this review and shifted its resources to conduct pandemic-related oversight. The OIG subsequently resumed this review and is issuing this report after, among other things, reviewing EOIR policies and procedures, conducting the Brownsville IHF fieldwork, interviewing relevant stakeholders, and surveying all EOIR judges.

Results in Brief

We found that, while EOIR has generally improved and expanded its virtual hearing technology and capabilities, there continue to be important areas that it needs to address to ensure that proceedings can be conducted effectively and fairly.

Although the scope of this report primarily focused on the IHF setting for MPP immigration hearings conducted via VTC, we believe that our findings have general application to various platforms that can be used to conduct virtual hearings. Remote hearing options can offer certain advantages in accessibility for participants, mitigation of health risks, and flexibility in docket management. However, remote hearings can also raise fairness concerns if the technology and processes are inadequate. EOIR has expanded its use of remote options to include the external Webex platform over the past year. The findings of this report should inform EOIR as it evaluates continuing or broadening remote options to conduct immigration hearings in the future.

During the OIG’s initial on-site fieldwork in Brownsville, we found that the video and audio quality for two-way connections to the IHF was generally adequate. For three-way hearings, however—where the DHS trial attorney joined the virtual hearing from a third remote location—the video feed of the trial attorney was frequently interrupted and often of poor quality. We also identified several sources of audial distractions that impeded hearings held at the IHF, regardless of the type of hearing. When we later surveyed EOIR judges nationally on their experiences with remote hearing options as they evolved over 2021, many surveyed judges expressed support for remote hearings; however, they also noted a need for enhanced technology and certain improvements to equipment and software, and some cited experiences where connectivity has occasionally been a problem.

We found that it was common for MPP hearing participants to join virtual hearings from a variety of locations and that each configuration created at least perceived advantages and disadvantages among participants. Further, based on our observations and discussions with hearing participants, we believe that it was potentially difficult at times for respondents at the IHF to follow the hearing process and clearly differentiate the distinct roles of certain participants—particularly the immigration judge as neutral adjudicator versus the DHS trial attorney litigating the removal—due in part to the positioning of the participants on the video monitor.

We identified several areas with potential to improve the quality and efficiency of virtual immigration hearings. For example, the majority of immigration judges, attorneys, and interpreters we interviewed who expressed an opinion on the subject believed simultaneous interpretation to be preferable and more efficient than consecutive interpretation, though EOIR is currently limited in its ability to provide simultaneous

interpretation for remote hearings. In addition, we identified areas where additional training or information technology resources may be necessary to adequately support EOIR's expanding use of remote hearings. Further, we found that EOIR must continue efforts to improve its processing of the volume of paper documents that may be filed for immigration cases, particularly those involving MPP respondents. Lastly, we found that EOIR must ensure both that respondents have adequate access to information on their rights in the immigration process and that it is meeting requirements for transparency and public access for immigration hearings, including those conducted virtually.

Recommendations

The OIG made 12 recommendations to assist EOIR with virtual hearing operations. We offer suggestions for improvement in areas including training and guidance, technical capabilities and support, accessibility and interpretation, and transparency for immigration hearings.

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Introduction

The Executive Office for Immigration Review (EOIR), a component of the U.S. Department of Justice (DOJ), is responsible for adjudicating immigration cases. EOIR interprets and administers federal immigration laws by conducting immigration court proceedings, appellate reviews, and administrative hearings under delegated authority from the Attorney General. U.S. Department of Homeland Security (DHS) attorneys from U.S. Immigration and Customs Enforcement (ICE) represent the federal government in removal proceedings. Immigration judges employed by DOJ's EOIR adjudicate these proceedings. Under the Immigration and Nationality Act, removal proceedings may take place in person; through video conference; through telephone conference, subject to the informed consent of the individual seeking entry into the United States (known as the respondent) for an evidentiary hearing on the merits; and, in some cases, in the absence of the respondent, when agreed to by the parties.¹

Pre-Pandemic Capabilities for Remote Immigration Hearings

EOIR immigration hearings traditionally have been held in person or remotely through video teleconference (VTC), depending on the immigration court, the type of case, and the docket. EOIR has a longstanding practice of holding some immigration hearings via VTC, and every EOIR courtroom has had an internal VTC system included as part of the standard courtroom equipment since 2018.² These VTC systems are internal government systems that historically have been used to connect EOIR brick and mortar locations with other EOIR locations and DHS facilities and offices. This was the status of EOIR remote hearing capabilities when the Office of the Inspector General (OIG) initiated this project in February 2020, shortly before the coronavirus disease 2019 (COVID-19) pandemic, with the objective of assessing policies and procedures pertaining to EOIR's use of VTCs, the quality of the VTC broadcasts, and the potential effects of the use of VTCs on immigration hearings. At the time of initiation, the OIG's initial focus was on use of VTCs in the setting of Immigration Hearing Facilities (IHF)—also known informally as “tent courts”—that DHS had begun operating in Brownsville and Laredo, Texas, for the purpose of processing individuals seeking entry into the United States who were subject to the Migrant Protection Protocols (MPP), also known informally as the “Remain in Mexico” program. In these settings, respondents would participate in their immigration hearings from the DHS-controlled IHF, though the EOIR immigration judge would not be physically present at the same location; instead, the EOIR immigration judge would connect to the hearings remotely from an immigration court via internal VTC systems.

Pandemic-Era Developments Involving Capabilities for Remote Hearings

After the World Health Organization declared COVID-19 a global pandemic in March 2020, EOIR took steps to increase its use of existing communication options and internal VTC capabilities in place at that time. Specifically, we found that, in addition to suspending certain dockets, EOIR tried to mitigate the risks posed to immigration proceedings by promoting the use of remote technologies, including VTC, when possible. On

¹ 8 U.S.C. § 1229a(b)(2).

² EOIR commissioned a 2017 Booz Allen Hamilton report, which in part discussed EOIR's internal VTC system capabilities at that time. See Booz Allen Hamilton, [Legal Case Study: Summary Report](http://www.aila.org/infonet/foia-response-booz-allen-hamilton-report) (April 2017), www.aila.org/infonet/foia-response-booz-allen-hamilton-report (accessed May 12, 2022). One finding in the report was that EOIR's video conferencing equipment could be “enhanced, improved, or replaced,” and the report recommended a “thorough review” of EOIR's video conferencing to find ways to “improve performance and provide additional IT support.”

March 18, 2020, the then EOIR Director communicated to all EOIR personnel guidance and best practices to promote the safety of staff and the public, which included reminders to immigration judges of their authorities to minimize contact in court space and encouragement that they resolve as many cases as possible without the need for a hearing. Among other topics, this guidance specifically reminded judges that they could conduct any hearing via VTC where operationally feasible and conduct individual merits hearings by telephone in removal proceedings if the respondent consented after being advised of the right to proceed in person or through VTC. In June 2020, when EOIR resumed some hearings for non-detained individuals, EOIR once again reminded immigration judges of their authority and ability to mitigate the exposure of staff and the public to COVID-19 by, among other things, conducting hearings via VTC or postponing hearings. EOIR used VTC options in two ways: (1) having respondents in some detained adult docket cases appear via VTC from the DHS-controlled detention center housing them and (2) holding some hearings via VTC between courtrooms in the same building in lieu of having all parties sit in the same room.

While EOIR was able to use its internal VTC system in these ways, for most of 2020 EOIR was unable to implement external video conferencing platforms that would have allowed non-detained respondents and other parties to proceedings to attend hearings remotely, from non-government settings. Obstacles to this implementation that EOIR cited included DOJ security standards and the legal requirement that all immigration court hearings be recorded for an official transcript, which EOIR has traditionally accomplished through its digital audio recording (DAR) system. However, EOIR ultimately determined that one external video conferencing platform, Webex, met these requirements. Use of this type of external platform would allow parties to attend proceedings remotely, either by video or telephone call. Although EOIR had used Webex at one location for MPP hearings prior to the pandemic, toward the end of 2020 EOIR began implementing Webex more widely as its external video conferencing tool.

In November 2020, EOIR issued a Policy Memorandum memorializing EOIR policies on the use of telephones and other video conferencing tools during immigration hearings.³ The Policy Memorandum provides that “EOIR’s policy remains that VTC may be used for any immigration court hearing, particularly when operational need calls for its usage.” It also states that, for the duration of the declared national emergency related to COVID-19, either party in an immigration proceeding may file a motion for the respondent or the representative for either party to appear at a hearing remotely through Webex. Further, this policy states that immigration judges may issue standing orders and immigration courts may have local operating procedures addressing remote appearances. Immigration judges have the discretion and authority to decide whether a party to a proceeding can attend a hearing via video conference, as opposed to in person.

According to the former EOIR Chief Information Officer, EOIR aimed to extend Webex capability to all immigration courts by mid-March 2021. As of March 19, 2021, 42 of the 70 immigration courts had Webex capability, and by summer 2021 EOIR had designated nearly all of its immigration courts as open, with Webex availability cited as an option for all but 3 of these courts with an open operational status. However, EOIR lagged in the deployment of tools that would enable immigration judges themselves to participate in hearings from a location other than a courtroom. EOIR began by deploying a handful of “remote kits”—a package of equipment and software including DAR transcription capability—originally as a pilot to allow immigration judges at home on reasonable accommodation to conduct hearings. As of April 2021, EOIR reported to the OIG that it had begun procuring more Webex licenses and remote kits of equipment so that

³ EOIR, Policy Memorandum, [Immigration Court Hearings Conducted by Telephone and Video Teleconferencing](https://www.justice.gov/eoir/eoir-policy-manual/OOD2103/download), November 6, 2020, www.justice.gov/eoir/eoir-policy-manual/OOD2103/download (accessed May 12, 2022).

immigration judges could adjudicate cases without being physically in the office or courtroom. Yet, as of March 2022, the majority of immigration judges could not do so, with EOIR having deployed only 149 remote kits, leaving nearly 450 immigration judges without this option.

Purpose and Scope

The OIG initiated this project in February 2020 as an inspection and review of immigration hearings held via VTC, including hearings conducted in DHS IHFs, with the stated objective of assessing VTC policies and procedures pertaining to the use of VTCs, the quality of the VTC broadcasts, and the potential effects of the use of VTCs on immigration hearings. At that time, two DHS IHFs in Texas were used for remote immigration hearings with immigration judges involving individuals in the MPP program: Brownsville and Laredo. Additionally, the OIG announced that, if circumstances warranted, the OIG would consider including other issues that might arise during the course of our inspection and review.

Because the OIG initially focused on VTC hearings in the DHS IHFs for MPP respondents, we began by conducting on-site fieldwork, observations, and interviews at the DHS-controlled Brownsville IHF and surrounding locations in early March 2020, which was just before the facility suspended hearings due to the COVID-19 pandemic. From mid-March 2020 through mid-February 2022, neither the Brownsville nor the Laredo IHF was used for immigration hearings with EOIR because: (1) in spring 2020, the entire MPP docket was suspended due to COVID-19 and (2) in January 2021, new applicants were not admitted to the MPP program following the change in administrations.⁴ According to DHS, the Brownsville and Laredo IHFs were instead used by DHS to administratively process former MPP respondents and individuals seeking exception from expulsion pursuant to 42 U.S.C § 265 (Title 42 exception cases), as opposed to being used for immigration hearings with immigration judges.⁵ Due to the COVID-19 pandemic and subsequent repurposing of the two facilities, the OIG was unable to conduct on-site fieldwork to assess remote hearings at the DHS-controlled Laredo IHF. However, after conducting on-site fieldwork at the Brownsville IHF, the OIG continued interviews and information requests with relevant stakeholders including immigration judges, pro bono attorneys, and EOIR leadership and information technology (IT) officials. The OIG also initiated and completed additional oversight work, including a separate limited-scope review of EOIR's response to the pandemic and a survey on pandemic-related experiences of personnel working for DOJ's litigating components, including all EOIR judges. EOIR's use of VTC and other remote hearing capabilities fell partially within the scope of both of these OIG efforts.⁶

⁴ As discussed below, in the [Migrant Protection Protocols Program](#) section of this report, the current administration subsequently resumed the MPP docket.

⁵ 42 U.S.C. § 265 enables the Surgeon General to prohibit the introduction of individuals into the United States when a communicable disease is present in the country of origin and "there is serious danger of the introduction of such disease into the United States." The current and past administrations have used Title 42 expulsions to reduce the likelihood of spreading COVID-19 domestically through the U.S.-Mexico border. During the course of the OIG's review, there have been several policy and legal developments related to the use of Title 42 expulsions. These developments are beyond the scope of this review.

⁶ As a result of the COVID-19 pandemic and the need to conduct COVID-19 related oversight work, the OIG temporarily paused this review and conducted a separate limited-scope review of EOIR's response to the pandemic, which contains further detail on EOIR's docket management and use of workplace flexibilities including telework and remote technologies. DOJ OIG, [Limited-Scope Review of the Executive Office for Immigration Review's Response to the](#)

Since the initiation of this project, EOIR has both promoted greater use of its internal VTC options that were historically available and deployed new external platforms to allow for significantly increased remote participation options in many immigration cases. EOIR also reported to the OIG during our separate limited-scope review of EOIR's response to the pandemic that it had assembled a working group to develop policies and procedures surrounding the use of video conferencing platforms by immigration judges outside of the courtroom. We present this report as insights and observations of EOIR hearings conducted remotely, in which respondents, respondent attorneys, interpreters, immigration judges, and DHS trial attorneys joined from a variety of locations. We believe that the takeaways from the OIG's inspection of the Brownsville IHF, as well as our interviews and other work in connection with this review, will help inform EOIR as it continues to investigate expansion of IT and software capabilities in order to allow for increased remote immigration hearing options for both detained and non-detained respondents and to provide guidance to its personnel for these settings.

Background

Immigration Proceedings

The initial hearing for a respondent before an EOIR immigration judge is called an *initial master calendar hearing* and is scheduled by the EOIR immigration court in coordination with DHS. During the initial master calendar hearing, the immigration judge explains the alleged immigration law violations, as well as the respondent's rights, including the right to have representation. In immigration proceedings, respondents can be adults, juveniles, or families, and they may seek an attorney or other authorized representative to represent them in immigration court. Respondents in immigration cases are not entitled to court-appointed or free counsel; but they may represent themselves, pay for counsel, or seek pro bono representation. The U.S. government provides interpreters to individuals whose command of English is "inadequate to fully understand and participate in removal proceedings," and immigration courts use staff interpreters employed by EOIR, contract interpreters, and telephonic interpretation services for this purpose.⁷ DHS trial attorneys from ICE's Office of the Principal Legal Advisor (OPLA) represent the federal government in the removal proceedings. If a respondent would like to apply for protection or relief from removal, such as asylum, the immigration judge will schedule an *individual merits hearing*, during which the respondent and the DHS trial attorney present arguments and evidence related to the respondent's application. The immigration judge then rules on the respondent's application for relief from removal.⁷ EOIR has a *non-detained docket* for

[Coronavirus Disease 2019 Pandemic](https://www.oig.justice.gov/sites/default/files/reports/21-063.pdf), Evaluation and Inspections Report 21-063 (April 2021), www.oig.justice.gov/sites/default/files/reports/21-063.pdf.

For our survey of immigration judges, see DOJ OIG, "[Survey of DOJ Litigating Attorneys and Immigration Judges on Work Experiences during the COVID-19 Pandemic](https://www.oig.justice.gov/reports/survey-doj-litigating-attorneys-and-immigration-judges-work-experiences-during-covid-19)," www.oig.justice.gov/reports/survey-doj-litigating-attorneys-and-immigration-judges-work-experiences-during-covid-19.

⁷ In August 2021, DHS and DOJ announced a proposed rule that would allow U.S. Citizenship and Immigration Services asylum officers to initially hear asylum cases of individuals who establish a positive credible fear of persecution or torture in expedited removal proceedings, a role currently assigned to EOIR immigration judges. Public comments on this proposed rule were due October 19, 2021, and over 5,000 comments were submitted. This was followed by an Interim Final Rule, published in March 2022, with a request for additional comments. According to the Interim Final Rule, individuals whose asylum cases are initially heard by asylum officers after they establish a positive credible fear of persecution or torture in expedited removal proceedings would "have the ability to seek prompt, de novo review with an immigration judge ("IJ") in EOIR through a newly established procedure, with appeal available to the Board of Immigration Appeals ("BIA") and the Federal courts." See [Federal Register](https://www.federalregister.gov/documents/2022/03/01/proposed-rule-procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat-protection-claims-by-asylum-officers), "[Proposed Rule: Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers](https://www.federalregister.gov/documents/2022/03/01/proposed-rule-procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat-protection-claims-by-asylum-officers),"

respondents who are living in the United States throughout their proceedings and a *detained docket* for respondents who are held in custody (at DHS-contracted facilities for adults and at U.S. Department of Health and Human Services shelters for juveniles).

Migrant Protection Protocols Program

The MPP program was officially in place from December 2018 through May 2021 and was later reactivated in December 2021 (see Figure 1 for a timeline with more detail on chronological developments affecting this program and pauses within these windows due to the COVID-19 pandemic and policy decisions). The MPP program directed that “certain foreign individuals entering or seeking admission to the United States from Mexico—illegally or without proper documentation—may be returned to Mexico and wait outside of the United States for the duration of their immigration proceedings, where Mexico will provide them with all appropriate humanitarian protections for the duration of their stay.”⁸ DHS administered this MPP program. In January 2021, DHS suspended the MPP program for new enrollments and began paroling MPP respondents into the United States.⁹ In April 2021, EOIR informed the OIG that some of the cases that had previously been included in the MPP program and subject to dedicated MPP dockets would instead be moved to and scheduled for the non-detained docket in the United States. In June 2021, the current administration issued a memorandum formally rescinding the MPP program. Yet, in August 2021, the U.S. District Court for the Northern District of Texas ruled that the administration must reinstate the MPP program until specified events occur and provide monthly status reports on its



<https://www.federalregister.gov/documents/2022/03/29/2022-06148/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat> (accessed May 16, 2022).

⁸ DHS, “[Migrant Protection Protocols](#),” January 24, 2019, www.dhs.gov/news/2019/01/24/migrant-protection-protocols (accessed May 12, 2022).

⁹ DHS issued a press release stating that on February 19, 2021, it would begin Phase 1 of a program to process respondents who were returned to Mexico and have active MPP cases pending with EOIR. DHS said that it would announce a virtual registration process that will be available to MPP respondents anywhere and, once registered, the respondents should wait for further information and should not approach the border until instructed to do so. DHS, “[DHS Announces Process to Address Individuals in Mexico with Active MPP Cases](#),” February 11, 2021, www.dhs.gov/news/2021/02/11/dhs-announces-process-address-individuals-mexico-active-mpp-cases (accessed May 12, 2022).

progress. That same month, both the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) and the U.S. Supreme Court denied the administration's motion to stay the district court's ruling.¹⁰

Thereafter, the administration reported that it had initially been unable to implement the MPP program due to ongoing negotiations with Mexico; however, by December 2021, the administration reached a deal with the Mexican government to reinstate MPP, and certain MPP hearings restarted. That same month, the Fifth Circuit affirmed the district court's ruling on the merits that the administration must reinstate the MPP program.¹¹ Although the administration resumed MPP hearings in December 2021, it also sought review of the Fifth Circuit's decision by the Supreme Court and oral arguments before the Supreme Court took place in April 2022.¹²

Respondents under this program are subject to the same general hearing process as other respondents on the EOIR detained and non-detained dockets, though their cases are part of a separate MPP docket. DHS would initiate removal hearings for individuals enrolled in the MPP program (described in this report as MPP hearings) by serving respondents with a Notice to Appear and filing a charging document with one of the immigration courts run by EOIR. MPP respondents would stay in Mexico to await their hearing and present to Mexican authorities a DHS-issued document, called a "tear sheet," which included information about the date and time of their immigration hearing and allowed them to enter the United States at the border for their hearing.

At the time of our site visits, an MPP respondent's place of arrival at the U.S.-Mexico border would determine which location would be the site of his or her hearing, among the four facilities used for this purpose: in Brownsville, Laredo, and El Paso in Texas and San Diego in California. Respondents appearing in Brownsville and Laredo had their hearings virtually in DHS-controlled IHFs after presenting themselves at the border. For these Brownsville and Laredo facilities, immigration judges appeared via VTC from immigration courts at separate EOIR court facilities across Texas. In contrast, if assigned to San Diego, MPP respondents were processed into the United States by U.S. Customs and Border Protection (CBP) and transported to the EOIR San Diego Immigration Court by DHS-contracted vehicles for an in-person proceeding. Respondents assigned to the fourth El Paso location had some hearings in person, where they were also transported by DHS-contracted vehicles; but others had hearings via VTC with immigration judges at a different location.

Many of the remote MPP merits hearings were handled by immigration judges out of the Fort Worth Immigration Adjudication Center (IAC), which was specifically designed to handle merits hearings via VTC. The Fort Worth IAC is not a traditional immigration court in that it does not have benches; space for an interpreter; room for observers; or other characteristics of a traditional courtroom, such as a witness stand or tables for the respondent and DHS trial attorney. Rather, EOIR designates Fort Worth as an IAC because the facility consists of a small space for an immigration judge to adjudicate a hearing remotely. In the instances when an

¹⁰ See *Texas v. Biden*, 554 F. Supp. 3d 818, 857 (N.D. Tex. Aug. 13, 2021) (granting injunction requiring government to "enforce and implement MPP *in good faith* until such a time as it has been lawfully rescinded in compliance with the [Administrative Procedure Act] **and** until such a time as the federal government has sufficient detention capacity to detain all aliens subject to mandatory detention under Section 1255 without releasing any aliens *because of a* lack of detention resources") (emphasis in original); *Texas v. Biden*, 10 F.4th 538 (5th Cir. Aug. 19, 2021) (denying government's motion to stay district court's injunction pending appeal); and *Biden v. Texas*, 142 S.Ct. 926 (Aug. 24, 2021), www.supremecourt.gov/orders/courtorders/082421zr_2d9g.pdf (accessed May 12, 2022) (denying government's motion to stay district court's injunction pending appeal).

¹¹ *Texas v. Biden*, 20 F.4th 928 (5th Cir. Dec. 13, 2021, revised Dec. 21, 2021).

¹² *Biden v. Texas*, No. 21-954 (U.S. argued Apr. 26, 2022).

immigration judge connected to an MPP hearing via VTC from a location other than the Fort Worth IAC, these judges generally connected from a more typical courtroom layout in an EOIR immigration court building. The following figure depicts the participant locations and logistics for MPP immigration hearings.

Figure 2

Locations Involved in MPP Immigration Hearings on the Texas-Mexico Border, as of March 2020



Logistical Details of MPP Hearings, by Respondent Location

MPP Respondent Location	Type of Facility in Respondent Location	Method of Hearing	Immigration Judge Location
Brownsville, TX	DHS Immigration Hearing Facility (IHF)	VTC	Harlingen IC, Port Isabel IC, Fort Worth IAC, or El Paso Service Processing Center (SPC)
Laredo, TX			San Antonio IC or Fort Worth IAC
El Paso, TX	EOIR Immigration Court (IC)	In person or VTC	El Paso IC or Fort Worth IAC
San Diego, CA		In person	San Diego IC

^a This graphic is specific to MPP hearings. Participant locations could vary for other types of hearings, e.g., certain non-MPP respondents who were already detained by DHS were also located in Port Isabel, but their cases were part of a separate docket. Not pictured on the map: the traditional IC in San Diego, California.

Source: OIG analysis based on EOIR information

We found that with MPP cases it was common for a different immigration judge to preside over the merits hearing than the immigration judge who presided over the initial master calendar hearing. In general, the majority of all MPP cases involved respondents who were not represented by attorneys, which was consistent with the OIG observations of hearings we were able to observe directly. During our observations, while the vast majority of respondents were unrepresented for their initial master calendar hearing, many respondents whose cases progressed to a merits hearing eventually obtained representation.

DHS Immigration Hearing Facilities

In September 2019, DHS began operating IHFs in Brownsville and Laredo, Texas, to process MPP respondents through their initial master calendar and individual merits hearings. These IHFs were also known informally as “tent courts” because they were temporary and portions of their construction were soft-sided. The IHFs were initially in operation facilitating immigration hearings for 6 months before they were shut down in March 2020 due to the onset of COVID-19. These IHFs remained shut down until February 2021, when DHS began paroling MPP respondents into the United States as a result of a January 2021 decision by incoming President Joseph R. Biden to suspend the MPP program for new enrollments, followed by a declaration of formal termination of the MPP program in June 2021. Upon the suspension of the MPP program, IHFs were not used for immigration hearings; instead, they were used to administratively process former MPP respondents (who would be scheduled for a later hearing on a non-detained docket) into the United States and individuals seeking Title 42 exceptions. DHS informed the OIG that as of October 2021 both IHFs were in the planning phases of being constructed to support immigration hearings again, and according to the administration’s October 2021 MPP update DHS had entered into a contract to rebuild the IHFs. Use of these IHFs for MPP hearing purposes again began in mid-February 2022 for the Brownsville facility and late March 2022 for the Laredo facility.

The Brownsville and Laredo IHFs are facilities located on the U.S.-Mexico border and attached to U.S. ports of entry. Though immigration hearings are conducted by EOIR, DHS was responsible for the development, construction, and day-to-day operations of the IHFs and played a significant role in various aspects of operations at these locations, both directly and through several contracted service providers.

Within DHS, ICE is one of the components that enforces immigration laws, primarily within the interior of the United States. In addition to the role of ICE trial attorneys as described above, ICE and its contractors were responsible for much of the day-to-day operation of the IHFs and also supplied the IT equipment inside (see Table 1 below). CBP, another component of DHS, is responsible for border management and control and apprehends individuals who attempt to enter the United States between ports of entry. CBP’s Office of Field Operations operates 328 ports of entry, including Brownsville and Laredo, and screens respondents prior to entry into the IHFs.

Table 1

DOJ and DHS Functions at the IHFs

Responsible Government Agency	Entity	IHF Function (September 2019–March 2020)
DOJ	EOIR	Control of MPP dockets Adjudication of immigration hearings via VTC from other locations
DHS	CBP	Operation of port of entry (ensuring entrants to the United States from Mexico have proper documentation and do not pose threats) Screening of respondents prior to entry into the IHF
	ICE	Operation of the IHF, selected contractors to run the IHF on day-to-day basis Source of IT equipment inside the IHF
	Contractor	Perimeter IHF security, overseen by DHS's Federal Protective Service
	Contractor	Construction of the IHF per ICE contract Cleaning and maintenance of the IHF
	Contractor	Internal security, escorting of respondents, clerk functions Operation of VTC equipment (including troubleshooting connection problems)

Source: OIG observations during fieldwork

As configured at the time of our site visits, the Brownsville IHF was considerably larger than the Laredo IHF. Specifically, the Brownsville IHF consisted of 6 master calendar hearing rooms, 60 individual merits hearing rooms, and 60 rooms for attorney-client meetings, while the Laredo IHF consisted of 4 master calendar hearing rooms, 18 individual merits hearing rooms, and 10 rooms for attorney-client meetings. According to ICE IT personnel, the Brownsville IHF had the greater size and scale of VTC equipment operating simultaneously compared to the Laredo IHF. The IHFs also had large rooms for respondents to wait prior to their hearings. Portable restrooms were also available to respondents at the IHFs, along with a day care for children.

DHS required MPP respondents, prior to their hearings, to arrive at the port of entry with their Notice to Appear document, tear sheet, and identification. CBP officials would verify that the respondents had a hearing and escort them into the security processing area. CBP officials removed all items beside court documents from the respondents and stored them until the respondents left the IHF. After going through security, respondents underwent a medical exam to detect communicable and contagious diseases. Upon completion of the medical exam, CBP handed control of the respondents to ICE contract employees, who performed courtroom security and courtroom functions inside the IHF. These ICE contract employees escorted respondents to a waiting room, after which they would be transferred to the hearing room shortly

before the scheduled docket start time. The entire process for intake at the Brownsville IHF took roughly 4 hours, meaning that respondents were expected to present themselves at the U.S.-Mexico border at 4:30 a.m. for an 8:30 a.m. initial master calendar hearing.

Results of the Review

Audio and Visual Quality Observed During OIG On-site March 2020 Inspection Efforts Relating to the Brownsville Location

For immigration hearings where the respondent was located in the Brownsville Immigration Hearing Facility (IHF), we found that, once connection between the hearing parties was established, the audio and visual quality of the internal video teleconference (VTC) connection generally allowed for parties to hear one another during the proceeding and see those in view of the camera in detail. However, as discussed below, there were some impediments to a clear audio and visual experience, and we noticed that certain hearing configurations resulted in degraded connections for certain participants. U.S. Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) information technology (IT) personnel noted that the Brownsville IHF had challenges with network connectivity, email access, and power at initial IHF setup; but they believed that this was in line with the normal experience for any new setup. Officials ranging from clerks to an Assistant Chief Immigration Judge observed that, when the Brownsville IHF first opened for use, there were numerous VTC problems, but that connectivity was much better a few months after opening. Our discussion in this section of the report is largely based on the 21 initial master calendar and merits hearings we were able to observe in person, at times from multiple concurrent locations, during the March 2–6, 2020 timeframe, as well as our subsequent interviews with additional relevant officials and stakeholders.

Establishing and Maintaining VTC Connection

We found that ICE contract clerks at the Brownsville IHF generally initiated the connection by calling the EOIR physical courtroom where the immigration judge was located at least 15 minutes before the scheduled hearing start time. The Brownsville IHF hearing rooms were equipped with tablets containing a list of EOIR courtrooms and their respective numbers to call. ICE contract clerks told us that the process of initiating a call from the IHF was relatively straightforward. The EOIR clerk in the physical courtroom then would accept the call, thereby completing the VTC connection.

Many immigration judges, along with clerks, DHS trial attorneys, and respondent attorneys, reported that VTC connections dropped on occasion; however, they described that the connection was usually reestablished in a brief time period. In nearly all instances described to the OIG and directly observed, the connection could be successfully reestablished by redialing or rebooting the VTC system within about 10 minutes from the time of the initial disruption. According to one Assistant Chief Immigration Judge, one Harlingen Immigration Court courtroom had problematic connections and one or two Port Isabel courtrooms had connectivity problems similar to those we observed.

We also heard that more severe connection problems occurred on a limited basis. Several EOIR clerks told us that, when multiple courtrooms in the same immigration court are running VTC at the same time, bandwidth is compromised. One clerk said that this causes a 30-minute delay on occasion. They told us that this has the secondary effect of delaying document transmission from the IHF and slowing down the database EOIR staff use to track cases. Individuals we interviewed, including immigration judges, trial attorneys, and respondents' attorneys, also reported that weather events can cause more significant connection difficulties. Immigration judges maintain discretion to adjourn hearings due to a VTC malfunction. According to EOIR data, of the 15,354 VTC hearings for Migrant Protection Protocols (MPP)

respondents at the IHFs between December 1, 2019, and February 10, 2020, 8 were adjourned due to VTC malfunction. However, malfunctions or connection difficulties that did not result in an adjournment were not included in this figure, which does not include temporary disruptions.

During the OIG's direct hearing observations, we noticed occasional connection difficulties, such as video freezing, a lack of audio, or calls dropping. However, in no instances of OIG observation were the technical difficulties involving the VTC connection so severe or sustained that a hearing could not be reconnected and had to be rescheduled. Further, EOIR informed us in March 2022 that its Office of Information Technology (OIT) increased bandwidth across all of its courtrooms, which may help ameliorate these connection issues.

Audio Quality

Most stakeholders in MPP hearings reported few issues being able to hear spoken dialogue. During our observations, OIG team members were able to hear nearly all aspects of the hearings from our positions in the hearing rooms, with the exception of occasional difficulty hearing the DHS trial attorney during Fort Worth merits hearings. Audio quality was also impacted by external factors; however, we found that these audio issues were not related to the intrinsic functionality of the VTC system itself. Rather, these audio disruptions were due to outside factors such as air conditioner (A/C) noise and nearby ICE contractor movement, which we discuss further in subsequent sections of this report.

Given the large size of some brick and mortar courtrooms and the master calendar hearing rooms at the IHF, both of which we visited in person, it is possible that an observer sitting in the back of the room could have had difficulty hearing. Some respondents' attorneys believed that the audio quality was compromised for participants at the IHF, and one attorney told us, "We have problems hearing maybe every third word." Another attorney said that she and the immigration judge were "talking over each other" due to a connection issue during a Fort Worth merits hearing.

ICE contract clerks at the Brownsville IHF reported that the portable microphone devices used at that facility were overly sensitive in that they could pick up nonverbal noises from the respondents, such as physical movements or shuffling papers. One DHS trial attorney said that the IHF microphones picked up even minor sounds. Due to the microphone sensitivity, the facility contractor posted "Quiet, Court in Session" signs outside the hearing room doors (though, as we discuss in the next section, contract staff still conversed outside the hearing rooms). ICE contract clerks told us that the issue could be partially resolved by moving the microphone to a different location on the respondent's table, at least mitigating nonverbal noise coming from the respondent, such as shuffling papers or moving in the chair.

We also spoke with immigration judges about their audio experience from their location at an immigration court connected via VTC to MPP hearings. Of the seven immigration judges who provided an opinion specifically on audio quality for MPP cases, all seven thought that it was at least acceptable to understand the hearing.

Video Quality

The master calendar hearing rooms at the Brownsville IHF were equipped with large, 80-inch monitors, and the merits hearing rooms were equipped with smaller monitors given the smaller size of the rooms.



Typical Hearing Rooms at the Brownsville IHF: *left*, Master Calendar Hearing Room; *right*, Merits Hearing Room
Source: OIG photographs

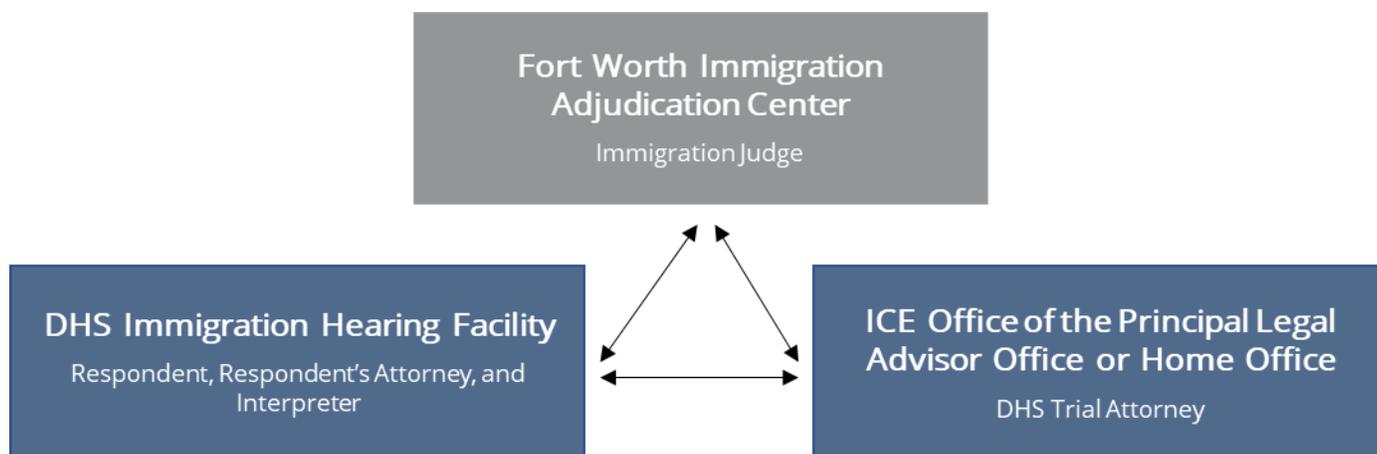
In a February 2020 interview with EOIR OIT personnel, EOIR's Director of IT Operations, who assisted with handling the configuration between EOIR's and ICE's VTC systems, informed us that the equipment ICE installed at the IHFs was brand new. In addition, EOIR's former Chief Information Officer (CIO), who oversaw the OIT, told us that the VTC equipment at EOIR immigration courts was in the process of being upgraded to newer models. During the time of our inspection in early March 2020, the Harlingen and Port Isabel Immigration Courts were not upgraded to newer models and still had the older equipment. However, by March 2022, the upgrades at both courtrooms were completed, according to EOIR.

Multiple immigration judges we spoke with believed that the video quality of the VTC connections for MPP hearings was excellent, allowing them to see respondents' eye movements, blinking, and facial expressions. They contrasted this MPP video quality experience with that of video feeds from detention centers, which they described as having older equipment and more video degradation, compared to newer equipment at the IHFs. Of the 12 immigration judges and Assistant Chief Immigration Judges we interviewed, all expressed the belief that the video quality, from their perspective, was at least adequate for MPP cases. Some judges went further and expressed great praise for the clarity in their video feeds and their ability to view respondents.

During our hearing observations, we observed that the video quality was largely consistent with the descriptions offered by the immigration judges. We noticed that during hearings the respondent was placed at a table in front of the room, near the camera, allowing for view by the immigration judge of the respondent's head and upper torso above the table. The majority of hearings we witnessed exhibited high-quality video, which allowed us to see facial expressions and nonverbal cues including nods, shrugs, blinks, yawns, and gum chewing. A smaller portion of our hearings exhibited what our team members equated to "standard definition television quality," where the video was acceptable but not as clear or crisp as the majority of hearings we observed. We also observed at least one merits hearing where the video quality worsened as the hearing progressed. Specifically, though the video quality was adequate for two-way connections in which the immigration judge and DHS trial attorney were both in one location and the respondent in another, we observed moderate to severe pixilation among DHS trial attorneys calling in for a three-way Fort Worth merits hearing. In this scenario, the immigration judge, respondent, and DHS trial attorney were in three separate locations, as depicted below.

Figure 3

"Fort Worth Model" of Three-Way Hearing Connection



Source: OIG observation

According to DHS trial attorneys we spoke with at the Harlingen Office of the Principal Legal Advisor (OPLA), some of the DHS trial attorneys from other OPLA offices participated from their homes, which, compared to an office, potentially limits internet bandwidth, compromising video quality. An OPLA supervisor told us that, for situations where Harlingen OPLA attorneys connected to Fort Worth merits hearings from the OPLA office, there were no complaints of a pixelated video feed, which we believe was likely due to the dedicated internet feed available from the office-based connection. EOIR OIT officials remarked that video degradation occurs when two or more ends run on different bandwidths. EOIR IT trouble tickets we reviewed included complaints about the DHS trial attorneys' video connection, even though EOIR IT does not handle these complaints and is not responsible for the DHS trial attorneys' connection. We observed significant pixilation issues among these attorneys, making it difficult for the immigration judge and respondent to see the DHS trial attorney.

Considering the importance of the role of the DHS trial attorney, particularly during a merits hearing, degradation of the video feed showing the DHS trial attorney is problematic from the standpoint of the respondent's ability to visualize the government representative litigating the removal case against him or her. As EOIR considers adopting VTC and other remote hearing options more widely, in configurations that may involve connections that are three-way or involve even more separate feeds, it must monitor whether these connections provide stable audio and video quality and allow for all participants to see and hear one another adequately. We encourage EOIR to collaborate with DHS to resolve situations where the issue may not derive from DOJ EOIR systems or personnel. In addition, for the equipment and connections that do fall under the primary responsibility of EOIR, we recommend that EOIR ensure that VTC upgrades in its courtrooms are on schedule and that recent increases to the required minimum bandwidth for immigration courts are sufficient to meet the current needs of the courts.

Other Issues Affecting VTC Audio and Visual Experience

Though the video and audio quality at the Brownsville IHF was generally stable for connections aside from the Fort Worth merits hearings, during our March 2020 site visit we observed other environmental factors at the Brownsville IHF that caused distractions during the course of a hearing. Specifically, there were several sources of background noise and other disruptions that the OIG observers and interviewees cited as potentially disruptive.

A/C Noise

While A/C noise was not a factor in the larger master calendar hearing rooms equipped with quiet central A/C systems, the smaller merits hearing rooms had window-unit A/Cs that produced a considerable amount of noise when the compressor cycled on and began to cool the room. Individuals we interviewed on site reported that the merits hearing room A/Cs caused a moderate to severe audio distraction for both the judge on the distant end and the respondent. This was also the observation of OIG personnel who attended hearings in the merits hearing rooms. An EOIR clerk assigned to the Port Isabel Immigration Court noted that merits hearing room noise can distract immigration judges, though she acknowledged that the noise does not distract her as much, as she does not have to focus on the content of a hearing to the extent an immigration judge does. One ICE contractor told us about attempts to resolve the noise issue by improvisational methods, such as using swimming pool noodles as insulation to dampen the A/C noise; however, this noise could not be mitigated completely. Another immigration judge mentioned asking clerks to adjust A/Cs or turn them off but noted that this request had to be balanced against IHF merits hearing room temperatures in summer, when outside local temperatures could regularly exceed 90 degrees Fahrenheit. Given the warm South Texas climate and the available A/C options

A/C Noise Causes Change in Venue

During one of our observations at the Brownsville IHF of a Fort Worth merits hearing, the hearing was ultimately transferred to a master calendar hearing room due to the respondent's attorney citing excessive A/C noise. The hearing was recessed a total of three times, the first two due to substantial pixilation on the part of the DHS trial attorney. The third recess occurred after the respondent's attorney told the immigration judge that it was "loud" and "uncomfortable" in the merits hearing room, at which point the immigration judge requested that the ICE contract clerk see whether another hearing room was available. After switching venues in the IHF, the respondent's attorney confirmed that the audio improved. There were no additional audio distractions in the master calendar hearing room, and the hearing was completed in this second location.

Source: OIG observation at the Brownsville IHF

suitable for the small rooms outfitted for merits hearings, we were told that the A/C noise could not be completely nullified. One potential solution was using master calendar hearing rooms at the Brownsville IHF for merits hearings (see the text box above); however, this option was dependent upon the availability of the master calendar hearing rooms and could be employed only if there were no previously scheduled initial master calendar hearings in the desired alternative space.

ICE Contractor Movement

During our observations at the Brownsville IHF, we generally found the facility to be clean and orderly in its operations. However, we noticed ICE contract staff, particularly Courtroom Security Officers and escorts, frequently entering and leaving the hearing rooms during the course of a hearing. Additionally, ICE contractors conversed among themselves directly outside the IHF hearing rooms, posing an aural distraction inside the hearing room. Several immigration judges told us that they sometimes requested these staff to limit their conversations. In contrast to the A/C noise problem in the merits hearing rooms, we believe that these distractions were more fully within the control of DHS and the ICE contractors.

Additional Environmental Distractions

Individuals we spoke with at the Brownsville IHF reported other distractions beyond the control of ICE contract staff operating the facility. Hearing rooms situated closer to the border crossing experienced more vehicle noise, from sources including K-9 units and transport vehicles. We also heard reports of noise from helicopters and other border patrol activities nearby. We believe that these ambient sounds, along with the A/C noise and ICE contractor movements described above, resulted in intermittent distractions that potentially caused difficulty understanding information transmitted during a hearing. EOIR should recognize the effect of ambient noise and outside distractions on hearing quality, if it enhances use of VTC and other remote options for immigration hearings, and circulate guidance to participants on best practices to avoid such disruptions during virtual hearings.

Various Logistical Configurations and Their Effects on Participants

During our fieldwork, we noticed that immigration hearing participants appeared from a wide variety of locations, including EOIR physical courtrooms, government offices, home offices, and DHS-operated IHFs. Based on both OIG observations and our interviews with respective stakeholders, each configuration entailed actual or perceived pros and cons for participants, depending on location and who was collocated. Although respondents may not be currently appearing for their MPP hearings in precisely the same manner and locations, we believe that our general observations on different configurations of participant locations remain relevant as remote capabilities for immigration hearings continue to increase, especially in the wake of COVID-19.

Table 2 below outlines the respective locations of parties, according to the location of the immigration judge, for MPP hearings as of March 2020.

Table 2

Locations of MPP Hearing Litigating Parties, March 2020

Immigration Judge Location	Respondent Location	Respondent's Attorney Location	DHS Trial Attorney Location	Interpreter Location ^a
Harlingen Immigration Court (IC)	Brownsville IHF	Harlingen IC or Brownsville IHF	Harlingen IC	Harlingen IC
Port Isabel IC	Brownsville IHF	Port Isabel IC or Brownsville IHF	Port Isabel IC	Port Isabel IC
San Antonio IC	Laredo IHF	San Antonio IC or Laredo IHF	San Antonio IC	San Antonio IC
Fort Worth Immigration Adjudication Center (IAC) ^b	Brownsville IHF, Laredo IHF, or El Paso IC	Brownsville IHF, Laredo IHF, or El Paso IC	DHS OPLA office or trial attorney's home	Brownsville IHF, Laredo IHF, or El Paso IC
El Paso Service Processing Center (SPC)	Brownsville IHF	Brownsville IHF or El Paso SPC	El Paso SPC	El Paso SPC
El Paso IC	El Paso IC			
San Diego IC	San Diego IC			

^a In some instances, interpreter location might vary. For example, some interpreters joined via telephone from alternate locations, particularly if there was a need for specialized services, such as for an indigenous language.

^b The Fort Worth IAC consists only of a small space designed to accommodate an immigration judge.

Source: OIG analysis based on EOIR information and OIG observation

We were able to conduct interviews with a variety of individuals who have experienced different roles in immigration hearings, including attorneys and advocates for respondents, immigration judges, and the DHS trial attorneys who represent the U.S. government in the removal cases against respondents. These interviewees identified perceived pros and cons to different configurations in which hearing participants join from a variety of locations.

The attorneys and advocates for respondents with whom we spoke described that an individual representing the respondent had to make a difficult choice between being in the same physical location as his or her client during a hearing or being in the same physical location with the immigration judge and DHS trial attorney at the immigration court. On the one hand, they stated that it is important to be in the same physical location as their client during a hearing. They explained that a respondent's attorney appearing

from the immigration court with the judge will be out of view of the respondent given standard camera positioning (see the [photograph](#) below for a visualization of a typical courtroom layout and camera positioning), and, as a result, the respondent might not have confidence that he or she is represented in the proceeding. Most respondent attorneys choose to attend hearings from the IHFs with their clients, and this is what we observed in most cases during our inspection of the Brownsville IHF. On the other hand, they expressed concern that, if they chose to be with the respondent instead of at a court location with the immigration judge and DHS trial attorney, they might miss information exchanged between the immigration judge and DHS trial attorney. Immigration advocacy groups we spoke with also believed that the DHS trial attorney had an advantage when appearing from the immigration court or a home office compared to a respondent's attorney appearing with the respondent from the IHF. Representatives of these immigration advocacy groups explained that DHS trial attorneys are allowed access to computers and the internet at the immigration court or their home office while respondents' attorneys were not allowed to bring electronic devices inside the Brownsville IHF. They noted that this allowed DHS trial attorneys to conduct legal research during a hearing, which was not an opportunity available to respondents' attorneys who attended the proceeding with their client at the IHF.

From the perspective of immigration judges, we heard the concern that VTC usage, particularly when the respondent and his or her attorney are together in one location that is different from that in which the judge is sitting, limits judges' ability to perceive whether the respondent is basing answers to the judges' questions on external sources. Two immigration judges we spoke with raised the concern that configurations where judges are not located in the same place as respondents with attorneys may allow attorneys to pass notes to the respondents while the respondent testifies, without the judge's knowledge. One of these immigration judges told us that he confirmed such an occurrence when he noticed that a respondent appearing remotely with an attorney was looking down while replying to a question from the judge; the immigration judge zoomed the video out and saw a piece of paper on the table. The immigration judge concluded that this was an indication that the attorney provided notes to the respondent during testimony. Another immigration judge told us that the use of VTCs with participants configured in this way could limit the immigration judge's awareness of whether a respondent has brought other documents into the hearing.

From the DHS trial attorney perspective, we heard the concern that a respondent appearing remotely in the same location as his or her attorney has an advantage because the respondent has additional time to consult with his or her attorney when a VTC connection is disrupted. DHS personnel also told the OIG that disrupted connections have the potential effect of slowing the trial attorney's momentum in building an oral argument to invalidate the respondent's claim for relief from removal.

Although these examples were specific to the use of internal VTC systems in the context of MPP hearings, as EOIR looks to expand the use of remote hearing and connections for individuals participating in immigration proceedings, we believe that EOIR should consider the effect of logistical arrangements on hearing participants when arranging remote hearings. As described above, different combinations of parties joining together in person or connecting virtually from separate locations can provide advantages or disadvantages to the litigating parties throughout the course of a hearing. For the hearing configurations that we examined, notwithstanding the pixilation challenges attendant with the DHS connection, one immigration lawyer recommended a layout such as that of Fort Worth merits hearings, where the immigration judge, DHS trial attorney, and the respondent (along with his or her attorney, if represented) all join from a different location—as shown in Figure 3 above. As it works to expand remote participation options for each

party, EOIR should evaluate the different configurations and consider ways to avoid ex parte communications (i.e., communications between the judge and one or more parties to a proceeding in the absence of other parties to the proceeding) and unequal access to courtroom discussions and other resources, while still ensuring that respondents with legal representation have adequate opportunity to confer with their attorneys.

Importance of All Parties Understanding the Hearing Process and Their Role in It

Respondent Audio and Visual Experience With “Know Your Rights” Presentations Before a Hearing

Respondents’ attorneys and immigration advocacy groups we spoke with stated that respondents have little or no exposure to U.S. immigration hearings procedures prior to arrival for their hearing. One way in which MPP respondents familiarized themselves with hearing procedures was attending in-person “Know Your Rights” presentations or listening to recorded video presentations on legal rights. According to several personnel from an immigration advocacy group we interviewed in April 2020, DHS denied their request to conduct in-person Know Your Rights presentations at the Brownsville and Laredo IHFs, stating that the video DHS played on this topic at the IHFs acted as a substitute for those presentations. This group told us that immigration advocates wrote a letter to DHS requesting an explanation for the denial; however, they did not receive a response.

During our March 2020 tour of the Brownsville IHF, we observed the video loop playing a recorded Know Your Rights presentation in Spanish in one of the waiting rooms for respondents. We observed a small monitor playing the video, which could be difficult to see from the back of the room. Additionally, there was background noise, which, combined with a lack of captions, would potentially make it difficult for a respondent to understand the video. Given the lack of in-person Know Your Rights presentations, combined with the above concerns with the video loop, we were concerned during our OIG fieldwork with a respondent’s ability to understand the immigration hearing procedures in advance of his or her hearing, particularly for those not represented by an attorney. We also note that the Government Accountability Office (GAO) published a report in August 2021 addressing aspects of respondents’ access to legal counsel and resources during the COVID-19 pandemic. The GAO found that detention facilities and providers of legal orientation program services (at least for detained respondents) encountered technological and logistical challenges to providing virtual or remote services.¹³ In a March 2022 response to a draft of this report, EOIR noted that it generally was not relying on recorded Know Your Rights videos or other virtual resources to prepare respondents for hearings, and DHS also commented that it was arranging for in-person Know Your Rights presentations. EOIR also stated that it was in the process of creating a new video with information specifically tailored for MPP enrollees and added that it was in continued dialogue with DHS to ensure that, if and when such a video is used at IHFs, the respondents are able to adequately see and hear the content of the video.

¹³ GAO, *Improvements Needed in Guidance and Stakeholder Engagement for Immigration Courts*, GAO-21-104404 (August 2021), www.gao.gov/assets/gao-21-104404.pdf (accessed May 12, 2022).

If DHS and EOIR continue to rely upon recorded Know Your Rights videos or other virtual resources to prepare respondents for hearings in the future, we recommend that EOIR ensure that the intended audience of respondents can adequately see and hear this content.

Respondent Audio and Visual Experience During a Hearing Due to Equipment Positioning and Framing

We found that the positioning and framing of VTC equipment impacted respondents' audio and visual experience during VTC hearings. Based on our observations, we believe that the respondents in the Brownsville IHF generally had an adequate view of the judge and interpreter (who were in physical courtrooms) through the VTC, though we observed that Brownsville IHF respondents did not have as clear a view of the immigration judges as the immigration judges had of the respondents. Yet, we found that respondents were often unable to see the DHS trial attorney participating in the hearing from the physical courtroom due to equipment positioning and framing. We further found that EOIR did not have a formal standard practice or governing policy on operating VTC equipment or framing camera views. A senior official with supervisory responsibility for two immigration courts told us that he was aware of best practices for conducting VTC hearings—guidance that was published as a resource by the Administrative Conference of the United States in late 2014.¹⁴ This document offers best practices and observations for various matters impacting VTC court hearings, including camera control, audio and visual considerations, and sight lines. For example, it states that the “need to see all parties clearly is mission critical to a video hearing” and that the “camera needs to face the person who is speaking.” The supervisory EOIR official said that he follows these best practices himself and takes measures such as virtually showing the respondent around the physical courtroom before the hearing begins. He told us that he was unsure, however, whether the immigration judges he supervises follow these best practices.

EOIR's typical equipment setup and framing often did not allow the respondent to see the DHS trial attorney present in the courtroom. Specifically, with the exception of Fort Worth merits hearings (in which the DHS trial attorney would connect from a location separate from the immigration judge and be displayed in his or her own window on the screen), we found that the DHS trial attorney sitting in a physical EOIR courtroom was not visible to the respondent sitting in the Brownsville IHF throughout the course of a hearing unless the immigration judge panned the camera toward the DHS trial attorney. Instead, the camera in the physical courtroom was fixed on the immigration judge and interpreter, making the trial attorney out of view for the respondent.

¹⁴ See College of William and Mary Center for Legal & Court Technology, [Report to the Administrative Conference of the United States: Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings](https://www.acus.gov/sites/default/files/documents/Final_Best%2520Practices%2520Video%2520Hearings_11-03-14.pdf) (n.d.), www.acus.gov/sites/default/files/documents/Final_Best%2520Practices%2520Video%2520Hearings_11-03-14.pdf (accessed May 12, 2022).



At the Brownsville IHF, contract clerks were responsible for operating the VTC system. The contract clerks generally set up the view the immigration judge in the physical courtroom saw of the respondents in the IHFs; however, immigration judges (or their clerks) had the option of further adjusting their view of some IHF hearing rooms because DHS configured some of its hearing rooms at the Laredo and Brownsville IHFs to allow far-end camera control from other locations. The immigration judges (or their clerks) at the courtroom locations also had the ability to adjust the view displayed of their own courtroom throughout the hearing; but the IHFs could not change this view because, for cybersecurity reasons, EOIR does not enable far-end camera control from non-EOIR locations.

One EOIR clerk told us that immigration judges will pan their cameras to show the respondent other angles in the physical courtroom if requested by a respondent or respondent's attorney; however, this did not appear to be standard practice, based on OIG observation or descriptions from those we interviewed. According to the immigration judges we interviewed, a few immigration judges utilize the capabilities of the VTC system, including panning to relevant parties in the courtroom, using far-end control to zoom in on the respondent, or asking the ICE contract clerk to adjust the camera on his or her behalf. However, for most immigration judges we observed or interviewed, the camera remained stationary throughout the hearing. In only 2 of the 19 non-Fort Worth hearings that we observed did immigration judges pan the camera toward the trial attorney to introduce him or her at the beginning of a hearing. Further, only 1 of the

12 immigration judges we interviewed told us that he rotates the camera toward the trial attorney during the cross-examination phase of the hearing. An ICE contract clerk described an alternative practice of having hearing participants step into the fixed view of the camera for initial introductions before taking their normal seats, but we did not observe this practice being used during our fieldwork. In response to our questions on this topic, immigration judges offered a variety of replies, with some acknowledging that they could pan the camera but that they had not historically done so. Other judges we spoke with expressed the view that the clerks on both ends of the VTC are responsible for camera movements or stated that the respondent prefers to see the interpreter at all times. When we asked whether it is possible to move the interpreter to the DHS trial attorney's table during the cross-examination phase, so both could be in view for the respondent, one immigration judge said that he had considered this but thought it would give the impression that the interpreter was working for the trial attorney.

Several immigration advocacy groups told us that during virtual hearings the respondent often confused the role of the immigration judge and the trial attorney in that the respondent did not understand that the immigration judge served as the neutral adjudicating party and that there was another official, off screen, participating in the role of an adversary. These immigration advocacy groups felt that this problem was compounded by the fact that most respondents have a limited, if any, understanding of English, making it difficult to distinguish different speakers. The roles of the immigration judge and the DHS trial attorney can be especially confusing for respondents during the questioning phase of a VTC merits hearing, where the immigration judge questions the respondent on the specifics of his or her asylum claim or claim for other relief from removal. Based on the nature of the targeted questions combined with the configuration and camera view depicted above, it was possible that the respondent could perceive the immigration judge as an adversary. One immigration advocacy group told us that respondents sometimes acted defensively toward the immigration judge due to the confusion.

We believe that these issues were potentially most acute in situations where the respondent could not see the DHS trial attorney during the cross-examination phase. Cross-examination during a merits hearing is the phase where the trial attorney asks the respondent clarifying questions or attempts to disprove the respondent's claim for asylum or other relief for removal. This phase of the hearing occurs after the immigration judge's initial set of questions or a direct examination by the respondent's attorney, if the respondent has legal representation. Not only the majority of respondents' attorneys and immigration advocacy groups, but also the majority of DHS trial attorneys we interviewed who expressed an opinion on the subject believed that the respondent should be able to see the DHS trial attorney during a cross-examination while the DHS trial attorney is speaking. However, at least one respondent attorney also emphasized that the respondent better understands the content if looking at the interpreter and, based on courtroom positioning and the camera view, it was unlikely that the interpreter and DHS trial attorney could easily be in the same view for the respondent.

Considering respondents' lack of familiarity with U.S. immigration hearing procedures, along with the possibility of EOIR using VTC for non-detained hearings in the future, we believe that it is important that EOIR take steps to ensure that respondents understand the roles of the participants in their proceeding, including that the immigration judge and DHS trial attorney are separate individuals with distinct roles. We believe that employing some of the approaches described above, including at least temporarily adjusting the view of the courtroom or asking the DHS trial attorney to step into the fixed view of the courtroom camera, would help mitigate the potential confusion created for the respondent when the DHS trial attorney generally remains off screen and out of view of the respondent. As EOIR evaluates and adopts additional

remote hearing functionality, we encourage EOIR to take steps to ensure that respondents are aware of the existence of each participant in the proceeding and his or her role, ideally by having all participants on camera and in view of the respondent for at least some portion of the hearing.

Muting the EOIR Courtroom

Respondents' attorneys and immigration advocacy groups we spoke with told us that the EOIR courtroom was often muted during MPP VTC hearings, preventing them and the respondents they represented from hearing information exchanged between the immigration judge and DHS trial attorney, which they believed could be potentially important. To combat this concern, one immigration judge we spoke with described adopting the practice of keeping the courtroom microphone "hot" during any time beside recess. This immigration judge said that she implemented this change after a respondent's attorney observed the immigration judge and DHS trial attorney having a conversation, which the respondent's attorney found concerning even though the immigration judge described this conversation as administrative in nature. During one of our observations at the Harlingen Immigration Court, we witnessed the DHS trial attorney muting the courtroom during a hearing recess. When the clerk returned to the courtroom, the trial attorney explained that he muted the courtroom because the immigration judge forgot to mute prior to recess. While muting the courtroom during a recess may be generally acceptable, we believe that EOIR, rather than the DHS trial attorney, should handle VTC functions. We further believe that keeping the courtroom unmuted during the entire hearing, as well as any time the judge is conversing with a party or attorney during a recess, could help mitigate potential concerns among those connecting remotely to a proceeding and not physically present in the courtroom that they may be missing important information.

Given our observations relating to the ramifications of different participant location configurations as well as courtroom muting practices, we recommend that EOIR consider ways to avoid unequal access to courtroom discussions and other resources when participants attend virtual hearings from different locations. In addition, based on the OIG findings in both of these areas and other aspects of the audio and visual experience of participants in remote hearings, we recommend that EOIR issue virtual hearing guidance or best practices to immigration judges and other hearing participants on courtroom operations, covering topics such as strategies to mitigate noise and other distractions that could affect a hearing, adequate introduction of all participants, appropriate positioning of participants and camera views during hearings, and appropriate times for muting. We note that, in a response to a draft of this report, EOIR described recent and ongoing efforts to provide training and guidance to its judges on ex parte communications and unequal access to courtroom discussions, as well as courtroom procedures, introduction of participants, and positioning of equipment. We encourage EOIR to continue these efforts and ensure that this content is available for all current and future EOIR judges.

Interpretation Issues

Simultaneous vs. Consecutive Interpretation

During our observations of MPP hearings conducted via VTC, we noticed that initial master calendar and merits hearings conducted out of the Harlingen and Port Isabel Immigration Courts for respondents sitting in the Brownsville IHF used consecutive interpretation rather than simultaneous interpretation. With simultaneous interpretation, the dialogue is interpreted almost concurrently while the immigration judge or respondent is speaking, largely eliminating the need for pauses. In contrast, during consecutive interpretation an immigration judge speaks in English, the interpreter relays the information back to the respondent in the respondent's native language (most commonly Spanish), the respondent replies to the

judge in the respondent's native language, and the interpreter provides the response to the immigration judge in English. EOIR's former acting CIO told us that, in the context of virtual hearings, simultaneous interpretation is possible if the immigration judge is located in a physical courtroom and a separate conference line is used for the interpretation, so the interpretation does not "bleed over" into the main audio connection for the hearing. However, EOIR's former acting CIO informed us that the digital audio recording (DAR) software EOIR uses for transcription would have to be upgraded to support simultaneous interpretation to ensure that a complete record of hearing is available. As of October 2021, EOIR did not have plans to make this adjustment or adopt additional interpretation software, although we later received updates on these efforts, detailed below. In addition, interpreters we spoke with told us that, due to the respondent and interpreter being in separate locations, simultaneous interpretation via headset (which is used for in-person hearings) was not technologically feasible. Several immigration judges told us that the interpreter could interpret via telephone call for oral decisions; however, this approach was not used for other parts of the hearing.

Despite these technical limitations and though some expressed concerns with simultaneous interpretation, the majority of individuals we interviewed who offered an opinion on the matter—including immigration judges, trial attorneys, and respondents' attorneys—preferred simultaneous over consecutive interpretation. Many of these individuals expressed the view that simultaneous interpretation was more efficient. In addition, respondents' attorneys and immigration advocacy groups we spoke with expressed concerns that, when consecutive interpretation is used, the entirety of the hearing is not interpreted for the respondent. They told us that questions or directives from the immigration judge are interpreted but dialogue between the immigration judge and trial attorney or orders for the clerk are not interpreted. In addition, these groups were concerned that the interpreter does not make the distinction as to who is speaking, i.e., whether it is the immigration judge or the trial attorney. When we sought clarification from EOIR on the requirements governing what must be interpreted by its federal or contracted interpreters, EOIR replied: "All portions of a hearing should be interpreted. EOIR provides full and complete interpretation during all immigration proceedings regardless of whether a contract or staff interpreter is being utilized or whether the interpreter is present in the courtroom or appearing through video-conferencing or telephonically."

Understanding the technical limitations involved with using simultaneous interpretation in VTC and other virtual hearings, we believe, consistent with EOIR's above statement, that interpreters should interpret all dialogue during a hearing, regardless of whether simultaneous or consecutive interpretation is used, and they should also specify who is asking the respondent questions, particularly during a merits hearing.

Location of the Interpreter

During our fieldwork, we noticed that contract interpreters generally appeared from the same location as the judge, at the immigration court, with the exception of Fort Worth merits hearings (where the interpreter was prevented by the small court setup from appearing at the courtroom and instead appeared from the Brownsville IHF with the respondent). Multiple immigration judges told us that the respondent and interpreter being in the same room is the ideal arrangement, as the respondent can follow the dialogue with greater ease. We asked EOIR about the factors that would determine the location from which an interpreter joins an immigration hearing. According to an EOIR written response, contract interpreters for MPP hearings participated from the immigration court, as opposed to the IHF, because of resource limitations on the part of the contractor. Additionally, we heard about occasions when a contract interpreter was denied

access into the IHF, which was operated by DHS. We also found that some interpreters used for these hearings were DOJ federal employees based out of the courtroom building locations.

Indigenous Language Interpretation

While the vast majority of MPP respondents spoke Spanish as their primary language, a small percentage understood some Spanish but primarily spoke indigenous Central American languages such as K'iche' or Mam. During our observations of initial master calendar hearings at the Brownsville IHF, we noticed immigration judges asking groups of respondents, "Does everyone speak Spanish as your primary language?" Respondents' attorneys and immigration advocacy groups told us that it is difficult for respondents to reply in the negative during such group settings. Following the group advisal in the initial master calendar hearing, immigration judges held individual sessions with respondents during the same hearing. If a respondent spoke an indigenous language, it would likely become apparent during that session. After the indigenous language is confirmed, the court takes steps to order an indigenous language interpreter for telephonic interpretation.

In the spring of 2022, EOIR provided updates relating to several interpretation issues identified by the OIG, including these indigenous language obstacles as well as the limited capacity for simultaneous interpretation and issues relating to access and location of interpreters. After receiving a draft of this report, EOIR solicited input from Assistant Chief Immigration Judges, who supervise MPP courts, on how immigration judges determine a respondent's best language; EOIR reported to the OIG that a respondent's primary language is initially determined based on information provided by DHS in the charging documents. Based on our OIG observations of the group advisal situations described above, as well as concerns expressed by respondents' attorneys and immigration advocacy groups, we recommend that EOIR consider ways to identify any potential language barriers outside of a group advisal setting. EOIR personnel agreed that there is significant value in confirming each respondent's best language before the start of a group advisal, in the interest of both efficiency and due process. Further, in response to a draft of this report, EOIR explained that it would continue to assess the value of issuing guidance encouraging immigration judges to obtain confirmation from each respondent, independent of the group, regarding his or her primary language.

In addition, according to a March 2022 update from EOIR, its OIT has identified software that would allow for simultaneous interpretation during virtual hearings, including hearings where immigration judges appear from non-court settings using remote kits. EOIR reported that it has tested and subsequently piloted this software on a limited basis in certain immigration courts. Given the advantages of simultaneous interpretation articulated by many immigration hearing stakeholders, we recommend that EOIR continue to explore equipment and services that would make simultaneous interpretation more universally available for immigration hearings. In addition, regardless of the method of interpretation, EOIR must ensure that it adheres to EOIR's stated policy of providing full and complete interpretation, to include interpretation of all portions of a hearing. Accordingly, we also recommend that EOIR confirm with all federal and contracted interpreters its policy that all portions of a hearing should be interpreted. We further recommend that EOIR work with DHS to ensure that interpreters are granted physical access to hearing locations including IHFs.

VTC Training for Immigration Judges

When asked whether they received VTC instruction during their initial immigration judge training at EOIR headquarters, the majority of immigration judges we spoke with in March 2020 reported that VTC was not covered. While several immigration judges stated that they learned how to operate the VTC on the job, or their clerks handled the VTC anyway, we also heard from some that a more formal VTC segment at the initial immigration judge training would be useful. At least one legal assistant for EOIR with whom we spoke said that she had received no training on operating VTC equipment.

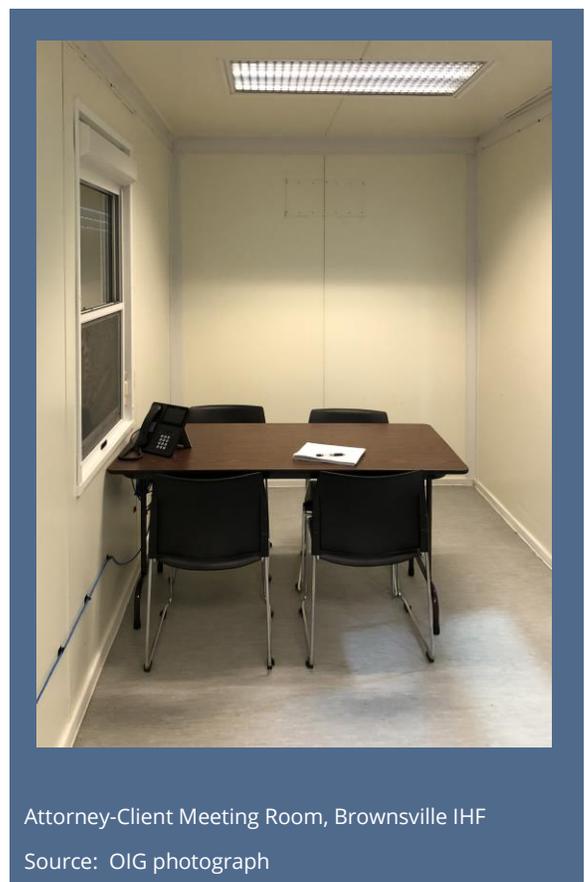
As of March 2022, in response to a draft of this report, EOIR informed us that all new immigration judges receive training on operating VTC equipment, holding Webex meetings, and using the DAR system during the new immigration judge training program. EOIR also told us that it had trained existing immigration judges on how to utilize this technology and that this training is also available for legal assistants and court support staff. EOIR reported that all immigration judges had received training on the use and functionality of VTC and Webex capabilities by March 2022, and EOIR provided agendas for new immigration judge training that contained sessions on operating a virtual courtroom, along with training guides that existing immigration judges receive when they are provided a Webex account. Although EOIR also reported that its training program for new judges now includes tips for establishing courtroom conduct and procedures, sample protocols, and guidance on setting expectations and etiquette, we found that this content is not incorporated into the training content for existing judges. Rather, the majority of the training content for all judges focuses on equipment capabilities and functionality. We therefore recommend that EOIR provide training for both new and existing immigration judges on virtual hearing best practices identified in response to the other recommendations in this report.

Other Issues Exacerbated in MPP Settings

Attorney-Client Meetings

As discussed above, the Laredo and Brownsville IHFs each contained attorney-client meeting rooms where attorneys could speak with their clients before a hearing began, though one immigration judge we spoke with was unsure whether attorneys or respondents knew that they could use designated rooms to talk prior to the start of a hearing. With MPP respondents located in Mexico, immigration advocacy groups told us that it was difficult for attorneys to meet with their clients in advance of the hearing date and that they often resorted to meeting in public parks on the Mexican side of the border or borrowing offices from other organizations.

During our March 2020 fieldwork, we found that the comprehensive CBP intake and screening process for respondents arriving from Mexico on the day of their hearings significantly limited the time available for same-day attorney-client meetings before their hearings.



This was particularly true for those with hearings on the morning docket, which would begin at 8:30 a.m. and for which DHS required respondents to arrive at the IHF at 4:30 a.m. Under DHS policy at the time, attorneys representing MPP respondents at the IHF were not granted access to the facility more than 90 minutes before the start of the hearing. After the required processing for respondents, which included security screening, medical screening, and storage of their personal items, along with the security screening for attorneys, immigration advocacy groups told us that the time remaining for attorney-client meetings in the dedicated space at the IHF was only about 1 hour, which they considered insufficient. Non-MPP respondents were not subject to similar time and logistical constraints for meeting with counsel in a private location because they were located in the United States in the time leading up to their hearings. DHS informed us in February 2022 that, under the resumed MPP program, respondents are allowed 3 hours to meet with attorneys, while EOIR informed us the following month that respondents are allowed 2 hours to speak with attorneys. Considering the importance of the opportunity for respondents to consult with counsel, as well as the logistical challenges to this process that we previously identified in the MPP program, we recommend that EOIR coordinate with DHS in an effort to ensure that facility procedures allow sufficient time for respondents in MPP and other settings to meet with their attorneys.

Document Transmission

When we initiated this project, respondents residing in the United States for non-detained hearings generally could submit hard copy documents in person at the immigration court filing window or mail them to the court. With MPP respondents residing in Mexico, we were told that it was difficult to submit documents in advance of the hearings (especially for pro se respondents, who represent themselves without counsel) because respondents could not physically show up to the immigration court, and we were told that sending mail from Mexico is unreliable. During our spring 2020 fieldwork, we observed significant delays at the start of hearings because respondents presented all of their documents during the day of their hearing. The documents were scanned by the ICE contract clerk at the IHF and sent electronically to the EOIR clerk at the immigration court. The process was time-consuming, especially for initial master calendar hearings, which could have upward of 50 respondents on the docket. A supervisory immigration judge told us that he had considered posting an EOIR staff member at the Brownsville IHF so respondents could drop off documents before their hearings; however, he did not view this as realistic due to staffing restraints and the fact that DHS, not EOIR, administers the port of entry.

Although some respondents formerly from the MPP docket may now reside in the United States and have more options to submit documents in advance of their hearings, given the resumption of the MPP program, we believe that document submission, primarily improving electronic filing capabilities and efficiencies, should remain a focus among EOIR leadership. As discussed in our EOIR COVID-19 report, electronic filing was an option at only 14 of the 69 immigration courts in March 2020, and we recommended in that report that EOIR improve its processing of paper filings and expand the EOIR Court and Appeal System (ECAS), which allows for electronic filing.¹⁵ Since that time, EOIR has gradually increased its electronic filing capabilities primarily through an expansion of ECAS, which it completed at all immigration courts in November 2021. Despite the expansion of ECAS, document filing for MPP respondents presents its own unique set of challenges, including the facts that many MPP respondents are not represented by attorneys, are unfamiliar with the immigration hearing process, and/or face potential barriers to accessing technology

¹⁵ DOJ OIG, [Limited-Scope Review of the Executive Office for Immigration Review's Response to the Coronavirus Disease 2019 Pandemic](https://www.oig.justice.gov/reports/limited-scope-review-executive-office-immigration-reviews-response-coronavirus-disease-2019), Evaluation and Inspections Report 21-063 (April 2021), www.oig.justice.gov/reports/limited-scope-review-executive-office-immigration-reviews-response-coronavirus-disease-2019, 14–16.

while they are in Mexico awaiting their hearings. In response to a draft of this report, EOIR stated that as of March 2022 respondents could electronically submit a change of address form, allowing them to receive official correspondence via email; EOIR also reported that it was in the process of implementing a “Respondent Access” portal designed to allow respondents to opt into electronic filing for document submission. As of March 2022, EOIR reported that it continues to coordinate with DHS on IHF processes and is discussing ways to improve document transmissions. We recommend that EOIR continue to pursue methods of improving pre-hearing document transmission, particularly for respondents who are unrepresented and on the MPP docket. Such mechanisms could include expansion of the Respondent Access portal beyond its pilot phase or provision of options for respondents to drop off hard copies at the U.S.-Mexico border.

Transparency and Public Access to Dockets

The Immigration and Nationality Act establishes that removal hearings shall be open to the public, though there are provisions for some exceptions in situations including requests from the respondent, concerns over safety of parties, and immigration judge discretion to place reasonable limitations on attendance depending on the physical facility involved.¹⁶ Immigration advocacy groups we spoke with in March 2020 expressed frustration with a lack of public access to the Brownsville and Laredo IHFs, compared to the level of public access afforded at in-person immigration courts. At the IHFs, attorney-observers were not allowed inside the facilities until several months after they opened. They told us that, once they were allowed in, they were given conflicting information about what items they could bring inside and they were also not allowed to select which hearings to observe. Additionally, these groups believed that the Fort Worth merits hearings lacked transparency, as public access is not allowed to the small physical courtrooms.

While the Fort Worth, Texas; Falls Church, Virginia; and recently added Richmond, Virginia, IACs operate as remote courtrooms designed to support dockets from other immigration courts, we believe that EOIR should consider the level of public access to this type of facility when designing courtrooms with a similar purpose in the future. EOIR officials also informed the OIG during our pandemic-focused limited-scope review that the working group it had assembled to develop policies and procedures surrounding the use of video conferencing platforms would be considering the issues of privacy protections and public access to hearings as required by regulations. However, in October 2021 EOIR reported no recent activity of the working group, and we concluded that, if EOIR adopts more remote hearings where most or all participants join from non-court locations on external conferencing platforms, EOIR would need to assess how this would affect the public transparency of its proceedings. By March 2022, in response to a draft of this report, EOIR stated that immigration courts had been advised to refer requests to observe virtual hearings to EOIR’s Public Affairs Office and further stated that members of the public could observe virtual hearings remotely through listen-only lines that are available. EOIR explained that observers in such circumstances are advised that, while hearings are generally open to the public, a hearing may be closed or held with limited attendance per governing regulations and that the use of electronic devices (including audio/visual recordings or photography) are prohibited, pursuant to an EOIR security directive.

In its response, EOIR also noted that it does not control entry to the DHS facilities, including the IHFs used for MPP enrollees; however, it was EOIR’s understanding that DHS, which is responsible for providing

¹⁶ 8 U.S.C. § 1534 (a)(2). For exceptions, see, among other provisions, 8 C.F.R. §§ 1003.27, 1240.10(b), and 1240.11(c)(3)(i).

security and access to the IHFs, intended to ensure greater access for the public to observe hearings than was previously afforded in these settings.

Remote Hearing Considerations Beyond the MPP and IHF Contexts

The scope of this report primarily focused on observations from the IHF setting, for immigration hearings conducted on established internal government VTC systems for respondents assigned to the MPP docket. However, in many instances, the observations above have applications to other virtual immigration hearing situations. As noted in the [Introduction](#) to this report, since the COVID-19 pandemic EOIR has gradually expanded options for parties to attend immigration hearings remotely—by video or telephone call. According to a November 2020 EOIR policy, for the duration of the declared national emergency related to COVID-19, either party in an immigration proceeding may file a motion to appear remotely through Webex, which may be granted at the discretion of the immigration judge. By summer 2021, EOIR had Webex available for nearly all of its immigration courts, which represented a significant expansion of opportunities for hearing participants to join remotely. The considerations cited elsewhere in this report—on topics including potential distractions and disruptions to hearings, the importance of all parties understanding the hearing process and their role in it, interpretation inefficiencies, the value of virtual hearing training, and need for transparency—are not limited to MPP cases heard via VTC connections to IHF facilities. Rather, these concerns are applicable to any immigration hearing in which some or all parties may connect virtually. In these situations, although the technology platforms and settings may vary, audio and visual considerations such as framing of the camera view and appropriateness of using a muting function remain important to the fair and effective functioning of proceedings. Further, as more remote hearing options become available and participants gain the ability to join from a wider variety of locations, it becomes paramount that each participant in a hearing is sufficiently introduced and identified. Similarly, with greater variability in the location configurations from which various participants may join a hearing, EOIR and its judges must remain cognizant of the potential advantages and disadvantages each configuration may entail for different participants.

According to EOIR's OIT, EOIR's adoption of Webex will supplement EOIR's preexisting internal VTC system usage rather than replacing it. One of the driving factors in the selection of Webex was its compatibility with EOIR's existing VTC infrastructure, making the integration of these two systems easier. The OIT described that, of the four VTC channels currently available on its VTC system, one can be used for a Webex connection. However, in addition to the various challenges in conducting VTC-based hearings that we identify throughout this report, EOIR also faces some additional obstacles to the smooth implementation and expansion of virtual hearings on other platforms such as Webex.

1. First, as noted in this report's [Introduction](#), despite the increasing options for other participants to join an immigration hearing from non-government spaces, most immigration judges still do not have this ability. The majority of immigration judges are still able to join virtual hearings only from courtroom locations due to transcription requirements and the limited number of "remote kits"—a package of equipment and software including DAR transcription capability—currently available to judges. EOIR officials told the OIG that they are continuing to expand video conferencing capabilities to allow more immigration judges to hold hearings while teleworking.
2. Second, an increase in the use of outside and home connections translates to a greater risk of bandwidth-related connection issues. According to EOIR's OIT, there are many opportunities for

issues with outside attorney connections to occur and those that occur often stem from bandwidth-related factors. EOIR's OIT also described that similar challenges are presented when those judges who do have remote kits connect to hearings from home because the home version loses some functionality as it is dependent on bandwidth. They instruct immigration judges that a "solid" internet connection is necessary to avoid pixilation. According to the EOIR OIT, EOIR cannot require its immigration judges to have a certain bandwidth standard without incurring a financial responsibility to support the cost of improved home internet services.

3. Third, interpretation options are limited by the current status of software and equipment, particularly when it comes to simultaneous interpretation, which most individuals we spoke with preferred and found more efficient. According to EOIR's former acting CIO, to conduct simultaneous interpretation in a virtual Webex hearing, two separate connections would be necessary: one on Webex and another involving a dedicated conference line for the interpreter to avoid the interpretation interfering with the rest of the hearing. EOIR's OIT explained that simultaneous interpretation could be done in a virtual setting with judges participating in person from courts; however, the DAR transcription tool must be upgraded at the physical courtroom. In addition, historically EOIR did not have the capability to facilitate simultaneous interpretation for judges in non-court settings and EOIR's remote kits for judges did not support this function. However, in March 2022 EOIR provided an update indicating that it is conducting a pilot program at some immigration courts that would allow for simultaneous interpretation during virtual hearings and EOIR explained that this included simultaneous interpretation capabilities for immigration judges appearing from non-court settings using remote kits.
4. Finally, with increased use of virtual hearing options such as Webex, adequate access, orientation, and support may remain a challenge for non-DOJ EOIR users and those outside EOIR space. EOIR reported that as of March 2022 it has undertaken several efforts to support such outside participants. Specifically, for DHS, EOIR reported that it had provided recommendations and assistance on Webex network implementation and bandwidth requirements suitable for hearings at IHFs and subsequently conducted testing of the integration, configurations, and communication stability. Further, for non-government users, EOIR described providing publicly available materials on navigating virtual hearings, including: (1) detailed step-by-step Webex instructions, (2) contact information for the local EOIR staff member at each court responsible for Webex issues, and (3) an information session. We find these to be positive steps in supporting users outside the DOJ EOIR environment, though we also note that pro se respondents without attorney assistance may experience additional barriers to accessing the technology and equipment required for a smooth virtual hearing process, which may be exacerbated depending on their location at the time of the hearing. In its March 2022 response to a draft of this report, EOIR reported that it provides orientation to pro se respondents through legal orientation programs meant to familiarize respondents with the immigration process and court procedures and that it has been in ongoing discussions with DHS to explore ways for legal service providers to conduct virtual legal orientation programs for individuals enrolled in MPP.

Perspectives from the Immigration Judges

Prior to the COVID-19 pandemic, our team conducted in-person interviews with immigration judges in Texas who were responsible for adjudicating MPP hearings over the internal VTC systems that were in place in early 2020. At that time, immigration judges we interviewed cited several advantages of using VTC to

adjudicate hearings, for both MPP and detained cases. Among them were reduced travel time, more efficient docket management, safety from respondents displeased with adjudication decisions, and reduced exposure to infectious disease.

We also asked immigration judges about concerns we heard from respondents' attorneys and immigration advocacy groups, who agreed that VTC usage was acceptable during times of a pandemic but expressed significant concerns on its general usage. In particular, these attorneys and advocates believed that VTC usage limited a respondent's ability to develop a rapport with the judge, that it created difficulty for the judge to accurately assess the respondent's credibility, and that the respondent was likely to be nervous and unable to understand courtroom procedures when placed in front of a screen rather than in a physical courtroom. Further, some respondents' attorneys and immigration advocacy groups we spoke with expressed the concern that VTC usage enabled immigration judges to deny relief on a larger scale. While many of the immigration judges we spoke with recognized the concerns among these groups, they expressed the perspective that their ability to adjudicate a hearing fairly was not compromised by the VTC and that they could still view the parties they needed to visualize and review the evidence they needed to rule on a case. For example, one Assistant Chief Immigration Judge told us that he uses the evidence to adjudicate a hearing "regardless of whether there's 30 feet distance or 300 miles distance" between him and the respondent.

Subsequent to our initial fieldwork and the onset of the pandemic, in May and June 2021 the OIG conducted a survey of all of the approximately 600 immigration judges, appellate judges, and administrative law judges employed by EOIR and received responses from more than half of them.¹⁷ This survey allowed us to collect additional updated perspectives directly from a national swath of EOIR judges, after EOIR began to adopt the Webex external hearing platform. Of relevance to this report, many judges voiced support for enhanced use of remote hearings. As emphasized in the dedicated survey product the OIG published, many judges articulated a strong desire for technology and equipment to enable remote hearing of immigration cases, although they understood this to be contingent on limited availability of remote kits. They also endorsed expanding the capacity for judges in particular to participate in remote hearings from non-court settings. Consistent with the pre-pandemic views collected from the Texas-based MPP judges, among the many advantages of virtual hearings cited by the national pool of judges responding to our 2021 survey were opportunities and flexibilities to:

- more easily assign immigration judges from around the country in courts with lower caseloads to assist other courts in areas overwhelmed by new cases;
- mitigate the significant cancellations that resulted due to the onset of the COVID-19 pandemic and decrease detention time for many respondents;

¹⁷ See DOJ OIG, "[Survey of DOJ Litigating Attorneys and Immigration Judges on Work Experiences during the COVID-19 Pandemic](https://www.oig.justice.gov/reports/survey-doj-litigating-attorneys-and-immigration-judges-work-experiences-during-covid-19)," www.oig.justice.gov/reports/survey-doj-litigating-attorneys-and-immigration-judges-work-experiences-during-covid-19. This survey, conducted in conjunction with another survey of attorneys working at DOJ's litigating components, primarily focused on COVID-19 and related telework opportunities, preferences, and needs. Through this survey, immigration judges had the opportunity to provide responses on topics including remote work and they also provided hundreds of comments in the space we provided for free text answers.

- improve efficiency and reduce costs; and
- adapt if another pandemic, natural disaster, or manmade disaster forces future closures of immigration courts across the country.

Many of the surveyed judges who offered commentary endorsed the idea that remote hearings could be more widely used and that, if other participants were already participating from non-court settings, judges might as well be able to do so too. They expressed the sentiment that some hearings could be done remotely by all participants, with comments such as “Frankly, a lot of the hearings can be done from home especially if they are going to be VTC anyway.”

However, a minority of judges who provided free text comments as part of their survey response articulated several drawbacks of increased use of virtual immigration hearings. For example, one surveyed judge observed that technology is helpful but does not replace in-court presence of counsel and that participation from home is not effective for merits hearings. Another judge acknowledged efforts to protect the integrity of immigration proceedings within the constraints of COVID-19 protocols but described that it had been much more difficult to proceed with cases without attorneys and the interpreter physically present in court. This surveyed judge believed that remote participation resulted in “less effective direct and cross examination,” “less clear interpretation,” and a missed opportunity for other hearing participants to appreciate “the nuance of seeing the respondent testify.” Another surveyed immigration judge described a scenario where all hearing participants—including the DHS trial attorney, the respondent, an interpreter, and witnesses—all participate in person from a physical courtroom while an EOIR judge joins remotely from an adjudication center elsewhere. This judge questioned the logic of not having a local judge also join the proceeding in person. A minority of surveyed judges also expressed skepticism that it was possible to have a robust immigration court system via VTC. For example, one immigration judge observed that “the bulk of our cases are unrepresented respondents and in our current posture we have no way to have them come to court nor do they have the technology to appear via VTC or Webex.”

Many of the judges who expressed support for increased options to conduct virtual hearings also noted a need for enhanced technology and certain improvements. For example, many judges identified the need for equipment and tools such as monitors and DAR transcription software. Surveyed judges wrote that EOIR needed to prioritize improving and expanding video equipment and technology, and some cited experiences where connectivity has occasionally been a problem. For example, one surveyed judge described that the audio and video connections to dormitories housing detained respondents in quarantine were “substantially worse” than those of court-to-court hearings and “much worse” than in-person hearings. A few immigration judges also cited challenges involving access to the full record of proceeding.

“It is not uncommon for an oral decision at the conclusion of testimony to last 45–60 minutes with simultaneous interpretation. However, when a judge must pause after every 6 to 10 words to allow for [consecutive] interpretation, it can take upwards of 2 to 3 hours to issue an [sic] decision, and judges simply do not have time for that (nor time to write up their decisions). And, the constant pausing inevitably causes a judge to lose his or her train of thought mid-sentence.”

Source: Free text comment submitted to the OIG by a surveyed immigration judge

Several judges expressed strong critiques about current interpretation capabilities for immigration hearings with remote participants (see the text box). Surveyed judges suggested that EOIR needed to find a way to

enable simultaneous interpretation in situations when judges are attending remote hearings from non-court settings. One judge noted that the current technology, which allows only consecutive interpretation, “slows down the whole process and complicates remote proceedings.” Another surveyed judge expressed the opinion that it was impossible to conduct three or four hearings per day with an interpreter connecting telephonically and conducting consecutive interpretation. This judge expressed a preference for simultaneous interpretation and support for ordering in-person contract interpretation services to be provided in court settings. This surveyed judge further expressed concerns that the current process, conducted by phone and done consecutively, creates time pressures on immigration judges “to nudge attorneys to ‘waive’ interpretation of parts of the hearing,” which this judge perceived as “not desirable” but necessary to accommodate EOIR’s practice of having interpreters call in by phone to hearings and provide consecutive interpretation.

These survey responses from immigration judges serve as an informative supplement to the perspectives the OIG team was able to obtain via the in-person interviews with immigration judges in Texas, specific to the experiences with MPP hearings and the internal VTC systems that were in place in early 2020. Among the more than half of all EOIR judges who responded to our 2021 survey, many expressed support for EOIR’s expanded use of other virtual hearing platforms such as Webex, at least in certain situations. They also identified the need to enhance the technology and equipment supporting such hearings and advocated that more judges should be included in the groups of participants who can now join immigration hearings from non-government settings. As EOIR looks to expand its use of remote hearings, we recommend that it continue the deployment of remote kits to immigration judges to ensure that immigration judges have the equipment necessary to adjudicate hearings efficiently, from non-court settings.

Conclusion and Recommendations

Conclusion

During our initial fieldwork at locations in Texas supporting Migrant Protection Protocols (MPP) hearings, we found that the audio and video quality for two-way video teleconference (VTC) hearings—where respondents in the Brownsville Immigration Hearing Facility (IHF) connected to immigration judges in the Harlingen Immigration Court, the Port Isabel Immigration Court, or the El Paso Service Processing Center—was generally adequate. Immigration judges were able to see respondents well from their positions in the courtroom, sometimes with a high level of detail, and the microphones were sensitive. Many judges we spoke with remarked that the video quality was superior to that of the two-way VTC connections to U.S. Immigration and Customs Enforcement detention centers, which we believe was at least partially attributable to the installation of new equipment at the IHFs prior to their opening in 2019. All immigration judges we interviewed who had involvement with MPP hearings believed that the VTC quality was sufficient, allowing them to conduct their duties and adjudicate hearings in a fair manner, though they did identify technical difficulties on the part of the U.S. Department of Homeland Security (DHS) trial attorneys for three-way Fort Worth merits hearings. Because those hearings were three-way connections, with DHS trial attorneys connecting from office or home locations, video quality on the part of the DHS trial attorney was often pixelated to the point that making out a face became difficult. Beyond our assessment of the quality of the audio and video connections themselves, we also identified several external sources of aural distractions that impeded hearings. We encourage EOIR to work with all parties in immigration hearings to ensure that each participant has sufficient connectivity and that external noise factors are mitigated to the extent possible, particularly as EOIR moves toward more hearings involving more than two-way connections from external locations with a variety of connection capabilities.

We found that for the MPP VTC hearings it was common for participants to join the hearing from a variety of locations and that each configuration of participants created at least perceived advantages and disadvantages among participants. In non-traditional court settings, particularly when some parties were present only virtually, we concluded that it is especially important that respondents be able to understand all core elements of the proceeding, including the role of each participant. In particular, we found that the existing VTC positioning and practices created the potential for confusion over the distinct role that the DHS trial attorney fulfills as the government representative litigating the removal case against them, compared to the role that the immigration judge performs as a neutral adjudicator. Accordingly, we believe that EOIR should adopt practices that help orient respondents, including on-camera introductions of all parties to the proceeding. We also identified additional areas for improvement by EOIR relating to muting practices and interpretation services, which should help promote perceptions of fairness and a respondent's ability to understand the process.

We identified several areas with potential to improve efficiency. Specifically, we observed that the need to scan the significant volume of paper documents that many respondents brought to their hearings created delays and inefficiencies on the days of their hearings. We encourage EOIR to continue finding ways to enable respondents, especially those who are unrepresented and on the MPP docket, to file documents ahead of their hearings. We also consistently heard from a variety of different stakeholder groups that simultaneous interpretation is greatly preferred over consecutive interpretation for reasons of both quality and efficiency. EOIR has historically encountered challenges providing this form of interpretation services in its non-traditional court settings, including MPP VTC and Webex virtual hearings, and it should continue

exploring solutions, such as the simultaneous interpretation pilot program it has recently undertaken, to achieve this capability more universally. Lastly, even prior to the pandemic, stakeholders we interviewed identified virtual hearings as a potential tool to assist with docket management. EOIR should consider the appropriate role that its use of internal VTC adjudication options and external hearing connections can play in alleviating its caseload and efficiently processing respondents.

During the COVID-19 pandemic, EOIR undertook an initiative to greatly expand virtual hearing capacity across its immigration courts. As discussed in the last section of this report, while our fieldwork focused mainly on the MPP program and virtual hearings involving VTC units at physical EOIR courtrooms, our findings have implications for EOIR's expanded use of virtual hearings using other platforms such as Webex. Regardless of the methods used for virtual hearings in the future, training for immigration judges, enhanced information technology equipment and support, and the circulation of best practices would all help to ensure the success of virtual immigration proceedings. In general, although respondent advocacy groups expressed concerns about the increased use of remote immigration hearings, particularly in non-pandemic scenarios, most judges who provided the OIG with perspectives on this hearing method did not share significant concerns. Some immigration judges we interviewed who heard MPP hearings via VTC acknowledged that, even with strong video quality, determining credibility is more difficult remotely, though many emphasized that they rely on the evidence to make a decision in a hearing. In addition, the hundreds of EOIR judges who responded to our summer 2021 survey generally expressed support for increased telework and remote hearing capabilities, especially during the pandemic. As EOIR continues exploring the future of its virtual court model, through steps such as the recent opening of the Richmond Immigration Adjudication Center, it must address the challenge of ensuring adequate access, orientation, and adherence to remote hearing best practices to promote the fairness and transparency of these hearings.

Recommendations

We recommend that EOIR:

1. Ensure that video teleconference upgrades in EOIR courtrooms are on schedule and that recent increases to the required minimum bandwidth for immigration courts are sufficient to meet the current needs of the courts.
2. Ensure that, if the Department of Homeland Security and EOIR continue to rely upon recorded Know Your Rights videos or other virtual resources to prepare respondents for hearings in the future, the intended audience of respondents can adequately see and hear this content.
3. Consider ways to avoid unequal access to courtroom discussions and other resources when participants attend virtual hearings from different locations.
4. Issue virtual hearing guidance or best practices to immigration judges and other hearing participants on courtroom operations, covering topics such as strategies to mitigate noise and other distractions that could affect a hearing, adequate introduction of all participants, appropriate positioning of participants and camera views during hearings, and appropriate times for muting.
5. Consider ways to identify any potential language barriers outside of a group advisal setting.

6. Continue to explore equipment and services that would make simultaneous interpretation more universally available for immigration hearings.
7. Confirm with all federal and contracted interpreters EOIR's policy that all portions of a hearing should be interpreted.
8. Work with DHS to ensure that interpreters are granted physical access to hearing locations including Immigration Hearing Facilities.
9. Provide training for both new and existing immigration judges on virtual hearing best practices identified in response to the other recommendations in this report.
10. Coordinate with the Department of Homeland Security in an effort to ensure that facility procedures allow sufficient time for respondents in Migrant Protection Protocols and other settings to meet with their attorneys.
11. Continue to pursue methods of improving pre-hearing document transmission, particularly for respondents who are unrepresented and on the Migrant Protection Protocols docket.
12. Continue the deployment of remote kits to immigration judges to ensure that immigration judges have the equipment necessary to adjudicate hearings efficiently from non-court settings.

Appendix 1: Purpose, Scope, and Methodology

Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (January 2012).

Purpose and Scope

In October 2019 the DOJ OIG received a congressional request directed to both the DOJ Inspector General and the U.S. Department of Homeland Security (DHS) Inspector General to investigate the use of video teleconference (VTC) to adjudicate Migrant Protection Protocols (MPP) immigration hearings in the DHS "tent courts," which are formally known as Immigration Hearing Facilities (IHF). This request raised concerns relating to potential due process issues, defective Notices to Appear, conditions inside the Laredo and Brownsville IHFs, potential violations of policies and/or laws that occurred within the IHFs, the adequacy of DHS non-refoulement interviews, and potential waste of public funding in building the IHFs.¹⁸

The OIG initiated this project in February 2020 as an inspection and review of immigration hearings, including hearings conducted via VTC and in DHS IHFs, which were operating in Brownsville and Laredo, Texas. Our objectives were to assess (1) policies and procedures pertaining to EOIR's use of VTC systems, (2) the quality of the VTC broadcasts, and (3) the potential effects of the use of VTCs on immigration hearings.

Our scope included EOIR's role in immigration hearings conducted at the IHFs that DHS began using in September 2019 to process respondents in the MPP (informally known as "Remain in Mexico") program through their initial master calendar and individual merits hearings. From September 2019 through March 2020, DHS operated two IHFs, in Brownsville and Laredo. These facilities were in active use until March 2020, when the MPP docket was suspended due to the onset of the COVID-19 pandemic. As of October 2021, due to more recent court rulings that the MPP program must resume, DHS informed the DOJ OIG that both IHFs were in the planning phases to support immigration hearings again and DHS had entered into a contract to rebuild the IHFs. Hearings at the Brownsville IHF resumed in mid-February 2022 and at the Laredo IHF in late March 2022. We completed on-site fieldwork at the Brownsville IHF and surrounding locations in early March 2020, while this IHF was still in use for immigration hearings. However, our fieldwork and direct observations did not include the Laredo IHF, which ceased immigration hearings shortly thereafter due to the pandemic. In March 2020, the OIG shifted resources to extensive pandemic-related oversight of DOJ components, including EOIR, which delayed our completion and issuance of this report. Since the initiation of this project, the status of the MPP program, use of the DHS IHF facilities, and immigration policies has evolved. Due to the pandemic, EOIR enhanced its use of remote options for immigration hearings to include not only the existing VTC systems but also a national deployment of the external Webex platform. EOIR also expanded electronic filing capabilities and began distributing digital audio recording remote kits that allowed certain immigration judges to conduct hearings from home offices.

¹⁸ In July 2021, the DHS OIG issued a report on MPP Notices to Appear. DHS OIG, [CBP Generally Provided Accurate Notices to Appear to Migrant Protection Protocols Enrollees, but Could Improve Procedures to Reduce Future Errors](https://www.dhs.gov/sites/default/files/assets/2021-07/OIG-21-45-Jul21.pdf), OIG-21-45 (July 2021), www.dhs.gov/sites/default/files/assets/2021-07/OIG-21-45-Jul21.pdf (accessed May 12, 2022).

Upon the OIG's completion of other pandemic-oriented products involving EOIR, we resumed this project and included in our scope EOIR's general capabilities to conduct virtual hearings, including hearings on dockets beyond MPP.

This report did not assess individual adjudication decisions by immigration judges or the overall level of fairness of VTC or remote hearing usage for immigration hearings.

Methodology

To obtain a point of comparison for immigration hearings conducted via VTC, we began our fieldwork in February 2020 by observing, at the immigration court in Arlington, Virginia, initial master calendar hearings that were conducted both in person and through VTC connections to respondents on the detained docket appearing from secure facilities around the country. We also visited EOIR's headquarters information technology (IT) control room.

Because the initial focus of this project was on VTC hearings in DHS IHFs for MPP respondents, we conducted on-site fieldwork, observations, and interviews at the Brownsville IHF and surrounding locations from March 2–6, 2020, before the Brownsville and Laredo IHFs suspended hearings due to the COVID-19 pandemic. This included a tour of the Brownsville Port of Entry and IHF provided by senior officials from DHS's U.S. Customs and Border Protection (CBP), which is responsible for operating ports of entry and screening respondents prior to entry into the IHFs. During the Brownsville field visit, the OIG directly observed immigration hearings, conducting observations from both the IHF location and the courtrooms it connected to in Harlingen and Port Isabel, Texas. During this site work, we observed a total of 21 hearings adjudicated by over a dozen different immigration judges. These OIG-observed hearings included both merits and initial master calendar hearings for respondents appearing as both individual and family units, both with and without attorney representation. For eight of the observed hearings, OIG staff were able to position themselves to observe the same hearing simultaneously from both the Brownsville IHF and the physical courtroom in Port Isabel or Harlingen, with the purpose of viewing VTC functionality on both ends of the connection.

We conducted a variety of interviews with individuals in a range of positions relevant to virtual immigration hearings, particularly MPP hearings conducted at the IHFs. While in Brownsville and its surrounding area, we conducted a total of 33 in-person interviews. These included interviews with immigration judges and clerks. We also spoke with both EOIR staff and contract interpreters. The OIG also met with several local immigration pro bono groups, including those listed on the referral resources provided at the IHFs to unrepresented respondents at the time of our site visit. In addition, we spoke with a variety of DHS staff and contractors. This included DHS trial attorneys from the U.S. Immigration and Customs Enforcement (ICE) Office of the Principal Legal Advisor, who represent the federal government in removal proceedings. Our interviews with DHS personnel also included ICE staff and contractors who were responsible for the IT equipment inside the IHFs and much of the day-to-day running of the IHFs in roles such as clerks, Courtroom Security Officers, and IT support positions. After the Brownsville site visit, the OIG continued interviews and information requests with relevant stakeholders, including immigration judges, pro bono attorneys, and EOIR leadership and IT officials. We conducted additional telephonic interviews with three immigration judges from the Fort Worth Immigration Adjudication Center. We also held another nine interviews with immigration advocacy groups and respondents' attorneys. We further supplemented initial interviews we had held with EOIR's former Chief Information Officer (CIO) and the Director of IT Operations

through follow-up discussions with EOIR's former acting CIO. In total, we interviewed over 60 individuals to obtain perspectives that informed this report.

The OIG supplemented its interviews and in-person fieldwork with information requests, as well as data and document reviews. We reviewed policies, procedures, and best practices related to VTC usage. We also requested and analyzed VTC trouble tickets as part of our review of available data on VTC malfunctions. As the pandemic progressed, we also periodically obtained updates from both EOIR and DHS CBP on the status of the IHFs, VTC system upgrades, consecutive and simultaneous interpretation capabilities, and logistical configurations for virtual hearings.

EOIR's use of VTC and other remote hearing capabilities fell partially within the scope of two additional DOJ OIG oversight efforts: (1) a separate limited-scope review of EOIR's response to the pandemic and (2) a summer 2021 survey on pandemic-related experiences of personnel working for DOJ's litigating components, including all EOIR judges.¹⁹ Information collected through those two oversight efforts that was relevant to the objectives of this project informed our analysis. For example, several hundred EOIR judges provided both structured responses and free text comments to our survey. The perspectives they offered regarding telework and EOIR's post-pandemic operations informed this report. Information from these two other OIG oversight efforts was used to enhance our understanding of the issues surrounding EOIR's use of technology to conduct virtual hearings, along with other operational challenges facing EOIR.

¹⁹ See (1) DOJ OIG, [Limited-Scope Review of the Executive Office for Immigration Review's Response to the Coronavirus Disease 2019 Pandemic](https://www.oig.justice.gov/sites/default/files/reports/21-063.pdf), Evaluation and Inspections Report 21-063 (April 2021), www.oig.justice.gov/sites/default/files/reports/21-063.pdf, and (2) DOJ OIG, [Survey of DOJ Litigating Attorneys and Immigration Judges on Work Experiences during the COVID-19 Pandemic](https://www.oig.justice.gov/reports/survey-doj-litigating-attorneys-and-immigration-judges-work-experiences-during-covid-19), www.oig.justice.gov/reports/survey-doj-litigating-attorneys-and-immigration-judges-work-experiences-during-covid-19.

Appendix 2: EOIR's Response to the Draft Report



U.S. Department of Justice
Executive Office for Immigration Review
Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

May 27, 2022

René Rocque Lee
Assistant Inspector General, Evaluation and Inspections
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Ms. Lee:

This is in response to your letter dated May 13, 2022, providing an official copy for review and comment on the formal draft report of the Office of the Inspector General (OIG), "Limited-Scope Inspection and Review of Video Teleconference Use for Immigration Hearings." Thank you for the opportunity to review the draft report and provide our agency's views prior to its issuance.

The Executive Office for Immigration Review (EOIR) appreciates the OIG's efforts throughout the audit process to comprehensively assess EOIR's use of video teleconference (VTC) technology in immigration hearings, and to offer recommendations for improvements in the use of virtual technologies in conducting such hearings. As the report recognizes, EOIR has a longstanding practice of holding some immigration hearings via VTC. In March 2020, when COVID-19 was declared a global pandemic and EOIR was forced to suspend most of its dockets, EOIR began exploring the expansion of virtual technologies to conduct hearings remotely whenever possible as a measure to mitigate health and safety risks posed by the pandemic. Operating in a pandemic presented unique and unexpected challenges to agency operations. Over the last two years, EOIR has worked tirelessly to identify and implement external virtual hearing platforms to allow all parties and immigration judges to attend hearings remotely from non-government settings. EOIR appreciates OIG's acknowledgement of the struggles EOIR encountered during the pandemic in promptly establishing and deploying these expanded technologies. EOIR agrees that there are areas for improvement and has actively taken steps to address the issues identified in the recommendations to the report. EOIR provides the following responses specific to each recommendation:

Recommendation 1 — Ensure that video teleconference upgrades in EOIR courtrooms are on schedule and that recent increases to the required minimum bandwidth for immigration courts are sufficient to meet the current needs of the courts.

Response: EOIR’s Office of Information Technology (OIT) is currently on-schedule with planned video teleconference upgrades. All upgrades are expected to be completed by April 2023. Additionally, EOIR can confirm that every Agency courtroom has the required minimum bandwidth (at least 20 mpbs) to allow for the capable and simultaneous use of video, voice, and data applications throughout each immigration court.

Recommendation 2 — Ensure that, if the Department of Homeland Security and EOIR continue to rely upon recorded Know Your Rights videos or other virtual resources to prepare respondents for hearings in the future, the intended audience of respondents can adequately see and hear this content.

Response: Presently, EOIR continues to primarily rely on in-person Know Your Rights (KYR) presentations for MPP respondents, conducted by local Legal Services Providers during live Legal Orientation Program briefings. Due to contractual and staffing constraints, local Legal Services Providers are unable to give live presentations each day of the week in the San Diego and El Paso Immigration Courts. Accordingly, EOIR has produced a recorded KYR presentation, in both English and Spanish, that is currently being utilized in San Diego and El Paso, on days when live KYR presentations are not available. The recorded presentation provides respondents with a plain language discussion of their rights in removal proceedings, and all advisals are carefully explained. The respondents are given the opportunity to view the video in a private room or courtroom, as opposed to an open waiting area, and they have the opportunity to review the video more than once, as needed. EOIR hopes to expand the use of the pre-recorded KYR presentations to all courts.

Recommendation 3 — Consider ways to avoid unequal access to courtroom discussions and other resources when participants attend virtual hearings from different locations.

Response: On April 26, 2022, EOIR’s Legal Education and Research Services Division (LERS) conducted a seminar via webinar, titled, “Best Practices for Remote Hearings.” All immigration judges currently conducting hearings from locations outside of EOIR space with remote Digital Audio Recording (DAR) kits were required to attend the live multi-hour seminar. The live seminar was recorded by EOIR’s OIT. On May 24, 2022, the recorded seminar and eBinder containing all training materials were made available to the entire corps of immigration judges. Immigration judges who did not attend the live training are required to watch the recording on or before June 14, 2022.

The portion of the seminar titled “Preparing for Remote Hearings, provides immigration judges with best practices intended to avoid unequal access to courtroom discussions. Immigration judges are instructed to ask witnesses and observers who are co-located with respondents to sit behind respondents and in view of the camera. Before proceeding with a hearing, immigration judges are instructed to confirm, on the record, that all participants appearing remotely can see and be seen, and can hear and be heard. In order to ensure that all participants have equal access to courtroom discussions from any remote location, immigration judges are trained to inform the parties that their microphones should remain unmuted and cameras should remain on during the hearing and during breaks, including for non-hearing related conversations or administrative

matters. Of course, immigration judges are also instructed to use their discretion regarding the muting of microphones, especially in special circumstances including, but not limited to: mental competency issues; attorney client privilege; and witness sequestration.

Additionally, in cases involving detained respondents, immigration judges have received special technical instructions for ensuring that the respondent, respondent's counsel, and government counsel each have the ability to appear via WebEx, even if all participants are appearing from separate locations.

Finally, to ensure equal access in the event of technical difficulties, immigration judges are trained to establish procedures for participants to follow in the event that a participant's access to a hearing is impacted by technical issues. Examples of these procedures include: providing the parties with the direct phone number for the immigration judge's clerk; informing the participants not to inappropriately confer about the proceedings while off-record; and, in the event that one or more participant is disconnected from the hearing, confirming with the parties for the record that no improper communications occurred, or, if any communications did occur, to summarize such communications on the record.

Recommendation 4—Issue virtual hearing guidance or best practices to immigration judges and other hearing participants on courtroom operations, covering topics such as strategies to mitigate noise and other distractions that could affect a hearing, adequate introduction of all participants, appropriate positioning of participants and camera views during hearings, and appropriate times for muting.

Response: The “Best Practices for Remote Hearings” training administered on April 26, 2022, comprehensively covered a wide variety of topics, including the following: preparing for remote hearings; ensuring that remote hearing settings are in a quiet space without distraction; camera angles and operation; introduction of all parties for the official record; identification of observers and witnesses; on-record confirmation that all participants can see and be seen and can hear and be heard; and appropriate circumstances for muting. Immigration judges have also been provided with an eBinder containing all training materials establishing best practices for conducting virtual hearings.

Recommendation 5—Consider ways to identify any potential language barriers outside of a group advisal setting.

Response: EOIR continues to consider ways to identify any potential language barriers outside of a group advisal setting, in addition to the practices it already employs. Before a scheduled group hearing, respondents are grouped by immigration court staff, according to their best language, as identified by the Department of Homeland Security. Immigration judges are trained to then confirm the language that the respondent speaks and understands best at each master calendar and individual merits hearing. If, for some reason, the respondent is given a rights advisal in a language that is not his or her best language, an interpreter in the best language for that respondent will be obtained, and the respondent will be re-advised in the best language, as identified by the respondent.

Recommendation 6 —Continue to explore equipment and services that would make simultaneous interpretation more universally available for immigration hearings.

Response: EOIR's OIT, in coordination with EOIR's Office of the Chief Immigration Judge (OCIJ), has identified a software solution that will allow for simultaneous interpretation during virtual hearings and has successfully completed Phase 1 of the Simultaneous Interpretation Pilot for remote DAR kits. Each group that participated in Phase 1 is currently conducting a full review of the pilot. The pilot review is expected to be completed before the start of Phase 2 of the program, which is scheduled to begin during the first week of June 2022.

Per EOIR's current contract with SOSi for language services (last modified July 1, 2021), all contracted interpreters must be adept at simultaneous interpretation and able to perform full and complete interpretation (everything is interpreted using a combination of consecutive and simultaneous modes of interpretation) that is factually and conceptually accurate without changes, omissions, or additions.

Recommendation 7 —Confirm with all federal and contracted interpreters EOIR's policy that all portions of a hearing should be interpreted.

Response: EOIR's Language Services Unit (LSU) confirms that both staff and contracted interpreters provide full and complete interpretation of proceedings, unless full and complete interpretation is waived by the parties. EOIR's Interpreter Handbook states that Immigration Court Interpreters employed by EOIR play a critical role in ensuring that matters delegated to them are interpreted accurately and completely. Full and complete interpretation services have been part of OCIJ policy since 2013.

Both the Interpreter Handbook and the Full and Complete Interpretation Policy are provided to all staff and contract interpreters. Moreover, EOIR's current contract with SOSi for language services (last modified July 1, 2021) requires contract interpreters to provide full and complete interpretation services for each hearing. If a contract interpreter refuses to provide full and complete interpretation, the interpreter is disqualified and removed from EOIR's roster of contract interpreters who may be called.

Recommendation 8 —Work with DHS to ensure that interpreters are granted physical access to hearing locations including Immigration Hearing Facilities.

Response: EOIR works with DHS to ensure that interpreters and all other court staff have physical access to all hearings when such access is needed. Currently, most interpreters participate at the Immigration Hearing Facilities (IHF) hearings virtually, although interpreters are appearing in person for hearings at the Laredo IHF for Laredo MPP cases. EOIR is not aware of the interpreters encountering any issues gaining access to the facility since it reopened earlier this year.

Recommendation 9 —Provide training for both new and existing immigration judges on virtual hearing best practices identified in response to the other recommendations in this report.

Response: Currently, training for new immigration judges includes a segment titled, “Remote Hearings – VTC, Telephonic, and Webex,” and is available to immigration judges to review as needed after the training. This training was added to the New Immigration Judge training (NIJT) program in May 2020, and provides general guidance to immigration judges for managing hearings conducted by VTC, as well as instructions for operating all relevant components of the system.

Additionally, as stated above, by June 14, 2022, all immigration judges will have completed EOIR’s multi-hour webinar, titled “Best Practices for Remote Hearings,” as part of their required annual training. Immigration judges have also been provided with an eBinder containing all training materials establishing best practices for conducting virtual hearings. The webinar was created for immigration judges to revisit the remote conferencing technologies that EOIR uses to conduct remote hearings and learn more about preparing for and conducting efficient and effective remote hearings. The webinar is also meant to provide technical troubleshooting strategies and practical tips for the best overall remote hearing environment and experience for all hearing participants. Finally, the course covers legal issues, including due process, credibility, and choice of law considerations, as they apply in the remote hearing context. Following completion of the training, EOIR expects immigration judges to apply the information reinforced during this training to prepare for and conduct remote hearings, while continuing to ensure an accurate and complete record.

Recommendation 10 —Coordinate with the Department of Homeland Security in an effort to ensure that facility procedures allow sufficient time for respondents in Migrant Protection Protocols and other settings to meet with their attorneys.

Response: DHS is responsible for transporting individuals on the MPP docket to their court hearings and has agreed to ensure that the respondents arrive early enough to allow for attorney consultations. Currently, two hours have been allotted for attorney consultations. This is true for all hearing locations, including Immigration Hearing Facilities. EOIR monitors the amount of time allotted for attorney consultation by reviewing reports produced by the immigration courts. If respondents need additional time to consult with attorneys, the immigration courts have the flexibility to adjust the schedule and provide additional time.

Recommendation 11 —Continue to pursue methods of improving pre-hearing document transmission, particularly for respondents who are unrepresented and on the Migrant Protection Protocols docket.

Response: EOIR continues to pursue methods for improving pre-hearing document transmission, including electronic filing for respondents, as well as options for obtaining case-related information electronically. EOIR launched the “Respondent Access” portal on November 20, 2021. At this time, unrepresented respondents are able to file the EOIR-33, Change of Address form electronically with either the immigration court or the Board of Immigration Appeals. The EOIR-33 form is available in English, Spanish, Punjabi, Portuguese, Chinese, and Haitian-Creole, both digitally and for download. Respondent Access also includes access to Automated Case Information (ACIS), where respondents can check their case status, as well as links to

ICOR (Immigration Court Online Resource), which provides information and resources about immigration proceedings.

Respondents may submit court filings in-person at a hearing, by mail, in-person at an immigration court filing window, and electronically through attorneys and accredited representatives. Respondents on the MPP dockets are permitted to file documents with the immigration judge on the day of their scheduled hearing. Respondents on the MPP docket may also submit documents by mail, if such a method is available to them, or electronically through attorneys and accredited representatives if they are represented. EOIR is actively working to expand the e-filing capability for respondents in proceedings before EOIR, via the Respondent Access portal, while ensuring that all sensitive personally identifiable information is protected.

Recommendation 12—Continue the deployment of remote kits to immigration judges to ensure that immigration judges have the equipment necessary to adjudicate hearings efficiently, from non-court settings.

Response: As of the date of this letter, 155 remote kits have been issued to immigration judges throughout the country. Each remote kit includes a laptop with a built-in camera, a headset with built-in microphone and headphones, a digital audio mixer, an audio splitter, and various cables and connectors for each piece of equipment. Additionally, OIT installs video conferencing software (WebEx) and recording software (VIQ Capture Pro) on each remote kit laptop.

Currently, EOIR's OIT does not have any remote kits in inventory—all available remote kits have been deployed. Due to global supply chain shortages involving DAR components, EOIR is not able to secure more units at present. However, EOIR intends to continue the deployment of remote kits to immigration judges as soon as the resources to build more kits become available.

EOIR remains committed to the improvement and expansion of virtual hearing technology and capabilities and will continue to make every effort to ensure that all proceedings are conducted effectively and fairly. We appreciate your efforts to assist EOIR in determining best practices to strengthen both objectives. Should you or your staff require further information, please do not hesitate to contact us.

Sincerely,



David L. Neal
Director

Appendix 3: OIG Analysis of EOIR's Response

The Office of the Inspector General provided a draft of this report to EOIR for its comment. EOIR's response is included in [Appendix 2](#) to this report. The OIG's analysis of EOIR's response and the actions necessary to close the recommendations are discussed below.

Recommendation 1

Ensure that video teleconference (VTC) upgrades in EOIR courtrooms are on schedule and that recent increases to the required minimum bandwidth for immigration courts are sufficient to meet the current needs of the courts.

Status: Resolved.

EOIR Response: EOIR concurred with the recommendation and stated that its Office of Information Technology (OIT) is currently on schedule with planned VTC upgrades, which are scheduled to be completed by April 2023. EOIR also stated that every agency courtroom has the required minimum bandwidth of at least 20 megabits per second to allow for the capable and simultaneous use of video, voice, and data applications throughout each immigration court.

OIG Analysis: EOIR's actions are responsive to this recommendation. By September 20, 2022, please provide a status update on the planned VTC updates, including the percentage of courtrooms that received the equipment.

Recommendation 2

Ensure that, if the Department of Homeland Security (DHS) and EOIR continue to rely upon recorded Know Your Rights (KYR) videos or other virtual resources to prepare respondents for hearings in the future, the intended audience of respondents can adequately see and hear this content.

Status: Resolved.

EOIR Response: EOIR concurred with the recommendation and stated that currently it relies primarily on in-person KYR presentations for Migrant Protection Protocols (MPP) respondents. However, due to contractual and staffing constraints, local Legal Services Providers are unable to give live presentations each day of the week in the San Diego and El Paso Immigration Courts. EOIR stated that it has produced a recorded KYR presentation, in both English and Spanish, that is currently used in San Diego and El Paso on days when live KYR presentations are not available. EOIR said that the recorded presentation provides respondents with a plain language discussion of their rights in removal proceedings and immigration judges explain all advisals carefully. EOIR stated that the respondents are given the opportunity to view the video in a private room or courtroom, as opposed to an open waiting area, and can review the video more than once, as needed. Lastly, EOIR stated that it hopes to expand the use of the pre-recorded KYR presentations to all courts.

OIG Analysis: EOIR's actions are responsive to this recommendation. By September 20, 2022, please describe how respondents are informed that they can (1) request the use of the private room to view the

KYR video before their court appearance and (2) request to view the KYR video another time. Additionally, describe the process for requesting the use of the room and viewing the KYR video more than once. Finally, provide evidence that as the use of the KYR video is expanded to other immigration courts EOIR will offer the same opportunity for respondents across all courtrooms.

Recommendation 3

Consider ways to avoid unequal access to courtroom discussions and other resources when participants attend virtual hearings from different locations.

Status: Closed.

EOIR Response: EOIR stated that on April 26, 2022, its Legal Education and Research Services Division conducted a seminar via webinar titled “Best Practices for Remote Hearings.” EOIR stated that all immigration judges currently conducting hearings from locations outside of EOIR space with remote digital audio recording (DAR) kits were required to attend the training that was recorded by EOIR’s OIT. EOIR said that the recorded seminar and all training materials were made available to the entire corps of immigration judges on May 24, 2022, and immigration judges who did not attend the live training are required to watch the recording on or before June 14, 2022. EOIR provided a copy of the training video, the slides used in the training presentation, and all associated training materials to the OIG. EOIR reported that portions of the training address unequal access to courtroom discussions, visibility of witnesses and observers, and the immigration judge’s role in confirming that all participants appearing remotely can hear and see everyone. Additionally, EOIR stated that, in order to ensure equal access to courtroom discussions, immigration judges are trained to inform the parties that their microphones should remain unmuted and cameras should remain on during the hearing and during breaks, including for non-hearing related conversations or administrative matters. Lastly, EOIR stated that immigration judges are instructed to use their discretion regarding the muting of microphones in circumstances such as mental competency issues, attorney-client privilege, and witness sequestration.

OIG Analysis: Based on the actions EOIR reported it has taken to consider ways to avoid unequal access to courtroom discussions and other resources when participants attend virtual hearings from different locations, this recommendation is closed.

Recommendation 4

Issue virtual hearing guidance or best practices to immigration judges and other hearing participants on courtroom operations, covering topics such as strategies to mitigate noise and other distractions that could affect a hearing, adequate introduction of all participants, appropriate positioning of participants and camera views during hearings, and appropriate times for muting.

Status: Closed.

EOIR Response: EOIR stated that the “Best Practices for Remote Hearings” training administered on April 26, 2022, covered a wide variety of topics, including the following: preparing for remote hearings, ensuring that remote hearing settings are in a quiet space without distraction, camera angles and operation, introduction of all parties for the official record, identification of observers and witnesses, on-record confirmation that all

participants can see and be seen and can hear and be heard, and appropriate circumstances for muting. EOIR also stated that immigration judges have been provided with all the training materials establishing best practices for conducting virtual hearings. EOIR provided a copy of the training video, the slides used in the training presentation, and all associated training materials to the OIG.

OIG Analysis: Based on the actions EOIR reported it has taken to issue virtual hearing guidance or best practices to immigration judges and other hearing participants on courtroom operations, covering topics such as strategies to mitigate noise and other distractions that could affect a hearing, adequate introduction of all participants, appropriate positioning of participants and camera views during hearings, and appropriate times for muting, this recommendation is closed.

Recommendation 5

Consider ways to identify any potential language barriers outside of a group advisal setting.

Status: Resolved.

EOIR Response: EOIR stated that it is considering ways to identify any potential language barriers outside of a group advisal setting, in addition to the methods it already employs. According to EOIR, before a group hearing, respondents are grouped by immigration court staff according to their best language, which is identified by DHS. Immigration judges are trained to then confirm the respondent's best language at each master calendar and individual merits hearing. If the respondent is given a rights advisal in a language other than his or her best language, EOIR said that an interpreter in that language is obtained and the respondent is re-advised in the best language.

OIG Analysis: EOIR's actions are responsive to this recommendation. By September 20, 2022, please describe how EOIR has tried to identify potential language barriers outside of a group advisal setting and any resulting potential barriers that were identified. Additionally, describe how EOIR will address the identified barriers.

Recommendation 6

Continue to explore equipment and services that would make simultaneous interpretation more universally available for immigration hearings.

Status: Resolved.

EOIR Response: EOIR stated that its OIT, in coordination with the Office of the Chief Immigration Judge (OCIJ), identified a software solution that will allow for simultaneous interpretation during virtual hearings and has successfully completed Phase 1 of the Simultaneous Interpretation Pilot for remote DAR kits. Each group that participated in Phase 1 is currently conducting a full review of the pilot, and the pilot review is expected to be completed before the start of Phase 2 of the program, scheduled to begin during the first week of June 2022. EOIR stated that the current contract for language services requires all contracted interpreters to be adept at simultaneous interpretation and able to perform full and complete

interpretation (everything is interpreted using a combination of consecutive and simultaneous modes of interpretation) that is factually and conceptually accurate without changes, omissions, or additions.

OIG Analysis: EOIR's actions are responsive to this recommendation. By September 20, 2022, please provide a status update on the Simultaneous Interpretation Pilot program.

Recommendation 7

Confirm with all federal and contracted interpreters EOIR's policy that all portions of a hearing should be interpreted.

Status: Resolved.

EOIR Response: EOIR confirmed that both staff and contracted interpreters provide full and complete interpretation of proceedings, unless full and complete interpretation is waived by the parties. Further, full and complete interpretation services have been part of OCIJ policy since 2013. EOIR stated that both the Interpreter Handbook and the Full and Complete Interpretation Policy are provided to all staff and contract interpreters; moreover, EOIR's current contract for language services requires contract interpreters to provide full and complete interpretation services for each hearing. Finally, EOIR reiterated that, if a contract interpreter refuses to provide full and complete interpretation, the interpreter is disqualified and removed from EOIR's roster of contract interpreters who may be called.

OIG Analysis: EOIR's actions are responsive to this recommendation. By September 20, 2022, please provide evidence that EOIR has reminded all federal and contracted interpreters of EOIR's Full and Complete Interpretation Policy.

Recommendation 8

Work with DHS to ensure that interpreters are granted physical access to hearing locations including Immigration Hearing Facilities (IHF).

Status: Resolved.

EOIR Response: EOIR stated that it works with DHS to ensure that interpreters and all other court staff have physical access to all hearings when such access is needed. Currently, most interpreters participate in the IHF hearings virtually, although interpreters are appearing in person for hearings at the Laredo IHF for Laredo MPP cases. EOIR reported that it is not aware of the interpreters encountering any issues gaining access to the facility since it reopened earlier this year.

OIG Analysis: EOIR's actions are responsive to this recommendation. By September 20, 2022, please provide evidence of communication with DHS regarding interpreter access issues. Also, describe the process for interpreters to gain access to the IHFs when access issues arise.

Recommendation 9

Provide training for both new and existing immigration judges on virtual hearing best practices identified in response to the other recommendations in this report.

Status: Resolved.

EOIR Response: EOIR stated that, currently, training for new immigration judges includes a segment titled “Remote Hearings–VTC, Telephonic, and Webex” and is available to immigration judges to review as needed after the training. EOIR stated that this training was added to the New Immigration Judge Training program in May 2020 and provides general guidance to immigration judges for managing hearings conducted by VTC, as well as operating the VTC system. EOIR reported that by June 14, 2022, all immigration judges will have completed EOIR’s multi-hour webinar, titled “Best Practices for Remote Hearings,” as part of their required annual training. Additionally, immigration judges have been provided with training materials that cover best practices for conducting virtual hearings. EOIR said that the webinar was created for immigration judges to (1) revisit the remote conferencing technologies that EOIR uses to conduct remote hearings, (2) learn more about preparing for and conducting efficient and effective remote hearings, and (3) access technical troubleshooting strategies and practical tips for the best overall remote hearing environment. Finally, EOIR said that the course covers legal issues, including due process, credibility, and choice of law considerations, as they apply in the remote hearing context. Following completion of the training, EOIR expects immigration judges to apply the information reinforced during this training to prepare for and conduct remote hearings, while continuing to ensure an accurate and complete record. EOIR provided a copy of the training video, the slides used in the training presentation, and all associated training materials to the OIG.

OIG Analysis: EOIR’s actions are responsive to this recommendation. By September 20, 2022, please provide a status update on whether all immigration judges have attended the required “Best Practices for Remote Hearings” training.

Recommendation 10

Coordinate with DHS in an effort to ensure that facility procedures allow sufficient time for respondents in MPP and other settings to meet with their attorneys.

Status: Resolved.

EOIR Response: EOIR stated that DHS is responsible for transporting individuals on the MPP docket to their court hearings and DHS has agreed to ensure that the respondents arrive early enough to allow for attorney consultations. Currently, all hearing locations, including IHFs, allot 2 hours for attorney consultations. EOIR monitors the amount of time allotted for attorney consultations by reviewing reports produced by the immigration courts. EOIR said that, if respondents need additional time to consult with attorneys, the immigration courts have the flexibility to adjust the schedule and provide additional time.

OIG Analysis: EOIR’s actions are responsive to this recommendation. By September 20, 2022, please provide evidence of EOIR’s coordination with DHS to ensure that respondents have 2 hours to consult with their attorneys. Provide copies of all reports produced by immigration courts with MPP dockets since the MPP restarted in December 2021 that specify the amount of time allotted for attorney consultations.

Provide the number of times attorney-client meeting times have been extended since December 2021. Also, describe which position(s) at these immigration courts are responsible for monitoring and adjusting the schedule to accommodate extra attorney-client meeting time.

Recommendation 11

Continue to pursue methods of improving pre-hearing document transmission, particularly for respondents who are unrepresented and on the MPP docket.

Status: Resolved.

EOIR Response: EOIR stated that it continues to pursue methods for improving pre-hearing document transmission, including electronic filing for respondents, as well as options for obtaining case-related information electronically. EOIR launched its “Respondent Access” portal on November 20, 2021, which now allows unrepresented respondents to file the EOIR-33, Change of Address form, electronically with either the immigration court or the Board of Immigration Appeals. EOIR reported that the EOIR-33 form is available in English, Spanish, Punjabi, Portuguese, Chinese, and Haitian-Creole, both digitally and for download. The Respondent Access portal also includes access to the Automated Case Information System, where respondents can check their case status, as well as links to the Immigration Court Online Resource, which provides information and resources about immigration proceedings.

EOIR stated that respondents may submit court filings in person at a hearing, by mail, in person at an immigration court filing window, and electronically through attorneys and accredited representatives. EOIR said that respondents on the MPP dockets are permitted to file documents (1) with the immigration judge on the day of their scheduled hearing and they may also submit documents by mail, if such a method is available to them, or (2) electronically through attorneys and accredited representatives if they are represented. EOIR reported that it is actively working to expand the e-filing capability for respondents in proceedings before EOIR, via the Respondent Access portal, while ensuring that all sensitive personally identifiable information is protected.

OIG Analysis: EOIR’s actions are responsive to this recommendation. By September 20, 2022, please provide a status update on implementation of the full Respondent Access portal. Please also list any alternatives pro se MPP respondents without access to computers have for submitting documents ahead of their hearings.

Recommendation 12

Continue the deployment of remote kits to immigration judges to ensure that immigration judges have the equipment necessary to adjudicate hearings efficiently from non-court settings.

Status: Resolved.

EOIR Response: EOIR stated that as of May 27, 2022, 155 remote kits have been issued to immigration judges throughout the country. Each remote kit includes a laptop with a built-in camera, a headset with built-in microphone and headphones, a digital audio mixer, an audio splitter, and various cables and

connectors for each piece of equipment. EOIR also stated that its OIT installs VTC software and recording software on each remote kit laptop.

EOIR reported that its OIT does not currently have any remote kits in inventory. All available remote kits have been deployed, and, due to global supply chain shortages, EOIR is not able to secure more units at present. EOIR intends to continue the deployment of remote kits to immigration judges as soon as the resources to build more kits become available.

OIG Analysis: EOIR's actions are responsive to this recommendation. By September 20, 2022, please provide a status update on the deployment of additional remote kits. Also describe EOIR's deployment goals, including the number of immigration judges that will receive the equipment, and the estimated timeframe to achieve the goals.