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## Policy Brief: Recommendations from Independent Study of Immigration Courts Contradict DOJ Policy Changes<sup>1</sup>

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On April 11, 2018, AILA and the American Immigration Council obtained a report through the Freedom of Information Act (FOIA), revealing that Department of Justice (DOJ) changes to the immigration court system contradict recommendations made in an independent evaluation that it commissioned. The April 6, 2017 “[Legal Case Study: Summary Report](#),” was written by Booz, Allen, Hamilton after a year-long case study on the U.S. immigration court system. The findings recommend changes that would increase judicial independence, place a premium on process over outcome, and ensure due process. For more information, read our [press statement](#) and visit [www.aila.org/immigrationcourts](http://www.aila.org/immigrationcourts). This policy brief highlights a few of the major recommendations in the study, as well as policy changes made by the current administration that contradict those recommendations.

Booz, Allen, Hamilton Study Recommendations	DOJ Immigration Court Policy Changes
<p><b>Judicial performance reviews should emphasize fair process and judicial independence - not quotas and deadlines.</b> Performance reviews should be in line with a judicial performance review model that “emphasizes process over outcomes and places high priority on judicial integrity and independence.” <i>See page 21.</i></p>	<p>On March 30, 2018, Executive Office of Immigration Review (EOIR) Director McHenry <a href="#">announced</a> strict quotas and deadlines would be part of immigration judges’ individual performance evaluations, a shift that undermines judicial independence and places an emphasis on quantity over quality in decision-making. <i>See <a href="#">Case Priorities and Immigration Court Performance Measures</a> – January 17, 2018.</i></p>
<p><b>Better access to attorneys is a solution to delays and inefficiencies in court processing.</b> Report explains that “pro se respondents often face difficulty representing themselves and may contribute to delays in court processing.” To overcome these delays, DOJ should “consider expanding know your rights and legal representation programs, such as the Legal Orientation Program (LOP).” <i>See page 24.</i></p>	<p>On April 10, 2018, EOIR announced its intention to cancel the Legal Orientation Program despite its immensely positive impact on judicial efficiency and fundamental fairness. <i>See <a href="#">The Washington Post: Justice Dept. to halt legal-advice program for immigrants in detention</a> – April 10, 2018.</i></p>

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<p><b>The lack of diversity in IJ perspectives is limiting.</b> 41% of the current immigration judges previously worked for DHS Immigration and Customs Enforcement (ICE) and nearly 20% of immigration judges previously worked at other DOJ branches. This “limits the diversity of perspectives on the bench.” The report recommends broadening the hiring pools and outreach programs to increase diversity of experience among IJs. <i>See pages 20-21.</i></p>	<p>Members of Congress recently received information alleging that DOJ has blocked multiple candidates for immigration judge or BIA positions based on their perceived political or ideological views. <i>See <a href="#">House Democrats Demand DOJ Respond to Allegations of Politicization in the EOIR Hiring Process</a></i> –April 17, 2018</p>
<p><b>The report identifies administrative closure as a helpful tool.</b> Specifically, the report recommends working with DHS to implement a policy to administratively close cases awaiting adjudication in other agencies or courts. <i>See page 26.</i></p>	<p>The Attorney General has certified for his review Board of Immigration Appeals (BIA) decisions that strike at the heart of a respondent’s ability to have a full and fair hearing. One of the issues he is reviewing is the authority of an immigration judge to administratively close proceedings. <i>See <a href="#">Matter of Castro-Tum</a></i>, 27 I&amp;N Dec. 187 (A.G. 2018). The Attorney General is also reviewing the ability of an immigration judge to grant a continuance so that “collateral” matters may be adjudicated. <i>See <a href="#">Matter of L-A-B-R- et al.</a></i>, 27 I&amp;N Dec. 245 (A.G. 2018).</p>
<p><b>There are widespread issues around technology, including video conferencing (VTC), which creates due process concerns.</b> It is difficult for judges to analyze eye contact, nonverbal forms of communication, and body language over VTC and the report suggests limiting the use of VTC to procedural matters. <i>See page 23.</i></p>	<p>EOIR has announced its plans to expand VTC. To increase adjudicatory capacity, “EOIR is planning to pilot VTC immigration adjudication centers (IACs), where IJs will adjudicate cases from around the country.” <i>See Backgrounder on <a href="#">EOIR Strategic Caseload Reduction Plan</a></i> – December 2017.</p>