



Access to Due Process

February 14, 2022

Fiscal Year 2021 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Acting Director

February 14, 2022

I am pleased to present the following report, "Access to Due Process," which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

This report was compiled pursuant to direction in the Joint Explanatory Statement and House Report 116-458, both accompanying the Fiscal Year (FY) 2021 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-260).

Pursuant to congressional guidelines, this report is being provided to the following Members of Congress:



The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Chris Murphy
Chair, Senate Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to the ICE Office of Congressional Relations at (202) 732-4200.

Sincerely,

A handwritten signature in blue ink, appearing to be "Tae D. Johnson", with a long horizontal flourish extending to the right.

Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement

Executive Summary

The Joint Explanatory Statement and House Report 116-458 accompanying the FY 2021 DHS Appropriations Act (P.L. 116-260) direct ICE to provide a report on overall access for attorneys to ICE facilities and direct that the report include the number of legal visits that were denied or not facilitated and the number of facilities that do not meet ICE standards for attorney/client communications. This report details the noncitizens' right to due process while in ICE custody to include access to legal resources and legal representation at ICE facilities.



Access to Due Process

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I. Legislative Language

This report was compiled pursuant to direction in the Joint Explanatory Statement and House Report 116-458, both accompanying the Fiscal Year (FY) 2021 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-260).

The Joint Explanatory Statement states:

Access to Due Process.—Not later than 90 days after the date of enactment of this Act, ICE is directed to provide a report to the Committees on overall access for attorneys and detainee representatives to ICE facilities. The report shall include the number of legal visits that were denied or not facilitated and the number of facilities that do not meet ICE standards for attorney/client communications. ICE is directed to make detention facility contact information and information regarding facility legal accommodations available on the ICE public website.

House Report 116-458 states:

Detention Inspection Reporting.—ICE shall continue to report and make public the following, as described in House Report 116-9, and shall follow the previously directed timeframes unless otherwise specified:

- (4) Access to facilities...

II. Background

U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) manages and oversees the civil immigration detention system of one of the most highly transient and diverse populations of any detention or correctional system in the world. ICE detains noncitizens solely to secure their presence for immigration proceedings and removal from the United States. ICE-detained individuals (noncitizens) are housed in a variety of facilities across the United States, including, but not limited to, ICE-owned and -operated facilities; local, county, or state facilities contracted through intergovernmental service agreements; and contractor-owned and -operated facilities.

A. Access to Legal Counsel

The Coronavirus Disease 2019 (COVID-19) pandemic has posed challenges to ensuring noncitizen access to counsel. However, noncitizen access to legal representatives remains a paramount requirement throughout the pandemic and has continued unabated, even while ICE takes important steps to safeguard the health and safety of those in its custody and to detect and mitigate the spread of COVID-19. Pursuant to *ICE ERO COVID-19 Pandemic Response Requirements*, visitation with legal representatives will continue unless determined to pose a risk to the safety and security of the facility.¹ Noncontact legal visitation (e.g., Skype or teleconference) is made available wherever possible to limit potential exposure, but in-person contact visits remain available at the request of the legal representative. ICE ERO does not track the number of legal visits that were denied or not facilitated and/or the number of facilities that do not meet ICE standards for attorney/client communications. However, in FY 2020, ICE's inspections did not identify any legal representatives being denied access to their clients, as confirmed by the DHS Office for Civil Rights and Civil Liberties (CRCL)² and other oversight bodies.

Facilities continue to provide noncitizens opportunities to meet privately with their current or prospective legal representatives, legal assistants, translators, and consular officials. Noncitizens in removal proceedings before the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) are entitled to retain counsel to represent them at no expense to the government (see Immigration and Nationality Act § 240(b)(4)(A)), and all those arrested by ICE and placed into removal proceedings are provided with a list of free legal services and aid resources, including pro bono providers.

ICE makes noncontact legal visitations available. Noncitizens are provided with a list of pro bono legal service providers maintained by DOJ EOIR and with contact information for the DHS Office of Inspector General, the ICE Office of Professional Responsibility Joint Intake Center,

¹ *ICE ERO COVID-19 Pandemic Response Requirements* 6.0 at <https://www.ice.gov/doelib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>, Visitation, p. 37.

² DHS CRCL memoranda of CRCL audits that occurred in FY 2019 to which ICE responded in FY 2020 and CRCL site visits that occurred in FY 2020 and those to which CRCL responded in FY 2021 did not identify legal representatives being denied access to their clients.

and nongovernmental organizations and advocacy groups on ICE's pro bono platform. Additionally, noncitizens are able to make free calls to pro bono legal service providers or to consular officials.

If noncitizens believe that their access to counsel has been restricted, they may file a grievance with the facility per the ICE National Detainee Handbook or may utilize the ICE ERO Detention Reporting and Information Line (DRIL), a toll-free service that provides a direct channel for noncitizens, family members, private attorneys, and other stakeholders. DRIL allows noncitizens to communicate directly with ICE ERO about detention concerns and allegations. The DRIL number is provided on a poster by the phone banks, in all housing units and common spaces, and in the ICE National Detainee Handbook, which is available to noncitizens in English and 10 other languages. English- and Spanish-speaking DRIL operators are available Monday through Friday (excluding holidays), from 8 a.m. to 8 p.m. (eastern time), to respond to inquiries. DRIL operators also use professional interpretation services when assisting callers who speak languages other than English.

In accordance with ICE detention standards, communication assistance throughout the detention process is available to noncitizens with disabilities, limited English proficiency, and/or illiteracy through bilingual staff and contracts with language services (interpretation and translation) providers. Legal counsel and representatives are permitted to use translators and interpreters when communicating with noncitizens who cannot communicate in English.

B. Legal Access Issues Identified in ICE Facility Inspections

In FY 2020, ICE conducted 77 facility inspections and identified 11 ICE detention facilities with a total of 12 instances of allegations of insufficient or missing transfer notifications to noncitizens and/or their legal representatives, delayed access to direct or free legal phone calls per the requirements of the *Lyon Settlement Agreement*³ (calls are to be granted within 24 hours of the request), or incomplete written legal access procedures (e.g., list of pro bono organizations, sign-up procedures for legal rights presentations, and attorney visitation policies and procedures) in local facility handbooks. ERO reviewed the corrective action taken by each detention facility to ensure that the identified issues were addressed and corrected.

C. Enhanced Access to Legal Resources and Representation

In FY 2020, ICE ERO made improvements in legal access accommodations by enhancing detained noncitizens' remote access to legal service providers, increasing coordination within ICE ERO to address legal access issues, collaborating with EOIR to expand Legal Orientation Program (LOP) resources, augmenting public access to legal accommodations information, and increasing legal access information for detained individuals.

³ *Lyon, et al. v. U.S. Immigration and Customs Enforcement et al.*, No. 3:13-Cv-05878-EMC (N.D. Cal. 2016). Settlement Agreement available at <https://www.ice.gov/doclib/legalNotice/lyonNoticeFinalSettlementEnglish.pdf>.

Enhancing Remote Legal Service Provider Access

To facilitate improved access to legal resources and representation, ICE ERO worked in coordination with ICE's Office of Acquisition Management to provide more than 500 free phone minutes to most noncitizens and to expand the Virtual Attorney Visitation (VAV) program.

VAV contract requirements were inserted into additional ICE detention contracts, which expanded the program from five to nine facilities in FY 2020.⁴ Utilizing platforms such as Microsoft Teams and Cisco WebEx, the VAV program allows legal representatives to meet with their clients or prospective clients virtually using video technology in private rooms or booths to ensure confidentiality of communications during remote legal visits. Increasing the efficiency and effectiveness of immigration proceedings, VAV also enhances facility safety and security by reducing noncitizen movement and by granting ICE more flexibility in scheduling visiting hours and in expanding visiting opportunities. Although VAV does not substitute for in-person meetings, it does provide an alternative for attorneys to communicate with clients in a timely and efficient manner. A list of facilities that have VAV can be found on the Attorney Information and Resources webpage on ICE.gov.⁵

On April 22, 2020, in response to the COVID-19 outbreak, ICE ERO began providing 520 free minutes per month to all noncitizens in facilities where telephone services are provided through ICE's Detainee Telephone System contract with Talton Communications. This ongoing program grants noncitizens 520 free minutes to call family members and/or legal representatives. ICE ERO also worked with non-Talton-covered facilities to provide free minutes. At the close of FY 2020, approximately 81 percent of the detained population had access to free minutes.⁶

Increasing Coordination within ICE ERO to Address Issues with Access to Legal Counsel

In FY 2020, ICE ERO recognized the benefit of greater support and coordination related to issues with access to legal counsel. To that end, ICE ERO designated Legal Access Points of Contact (LA-POC) in field offices nationwide. These LA-POCs work with the ICE ERO Legal Access Team at headquarters to address legal access-related issues and to implement practices that enhance noncitizen access to legal resources and representation.⁷ ICE ERO also created dedicated internal legal access mailboxes so that legal access inquiries are routed to the appropriate points of contact more expeditiously and efficiently. Some ERO field offices have

⁴ Denver Contract Detention Facility (Denver Area of Responsibility (AOR)), Imperial Regional Detention Facility (San Diego AOR), Folkston ICE Processing Center (Atlanta AOR), Irwin County Detention Center (Atlanta AOR), Stewart Detention Center (Atlanta AOR), LaSalle ICE Processing Center (Jena) (New Orleans AOR), Otay Mesa Detention Center (San Diego AOR), Pine Prairie ICE Processing Center (New Orleans AOR), and South Texas ICE Processing Center (San Antonio AOR) have instituted the VAV program. Please note that since the start of FY 2021, two additional facilities have instituted VAV, Adelanto ICE Processing Center (Los Angeles AOR) and T. Don Hutto Residential Center (San Antonio AOR).

⁵ <https://www.ice.gov/detain/attorney-information-resources>

⁶ The list of Talton and non-Talton-covered facilities providing free minutes can be found here: <https://www.aila.org/infonet/ice-facilities-free-telephone-minutes>

⁷ ICE ERO delivers monthly trainings on best practices in legal access provision for 80 designated LA-POCs in the 24 ICE ERO field offices. The trainings are posted in the ERO Legal Access Resource Center on ICE's intranet site.

elected to make these available for communication with external legal access stakeholders as well.

Collaborating with DOJ, EOIR

ICE ERO continues to work with DOJ EOIR to expand LOP services in ICE detention facilities nationwide. Currently at 46 ICE detention facilities, LOP educates noncitizens who are in immigration court proceedings about the immigration court process, enabling them to make informed decisions, thus increasing efficiencies in the immigration court system and decreasing detention times for noncitizens. Working with DOJ EOIR, ICE ERO addresses issues identified by LOP providers to ensure that service requirements are met. Following the COVID-19 outbreak, ICE ERO increased coordination with DOJ EOIR to troubleshoot the provision of remote LOP services. ICE ERO continues to work with field offices to develop facility-specific solutions as requests are made by DOJ EOIR or LOP providers. New initiatives in FY 2020 included:

- Expanding access to legal orientation programming by working with DOJ EOIR to obtain LOP materials in more than 30 languages, including audio and video recordings. The ERO field offices then (where operationally feasible) uploaded these materials onto law library computers nationwide.
- Implementing and disseminating information about a new LOP Information Hotline, which provides access to LOP information for all detained noncitizens over the pro bono platform.

Increasing Public Access to Legal Accommodations Information

In FY 2020, ICE ERO worked to provide additional information on its public website regarding legal access accommodations at facilities and information for legal representatives. ICE ERO achieved this through the following endeavors:

- Updated facility webpages on its public website upon request by ERO field offices, to include additional information regarding how legal representatives can communicate with detained clients. Because procedures may differ from facility to facility, including this information on the public website ensures that legal representatives are aware of, and can avail themselves of, all methods of communication with their clients and prospective clients.
- Several field offices and facilities developed and implemented procedures by which legal representatives can send and receive electronic documents to or from detained noncitizens.
- A new “Legal Access at a Glance” flyer was designed for legal representatives and is available on the public website. The flyer provides information on the ICE detention standards, policies, and procedures related to legal access, and contact information of other government entities and links to additional resources.

- A new VAV flyer, modified for facility-specific information, was designed for legal representatives and is available on the public website facility pages where VAV is available.

Increasing Legal Access Information for Detained Individuals

ICE ERO continues to increase legal resources and information available to noncitizens. In FY 2020, ICE ERO created a flyer for noncitizens, which addressed legal visitation procedures in response to the COVID-19 pandemic. Secondly, ICE ERO updated the Legal Access Facility Resource Guide for DRIL call analysts. The guide provides information about LOP service providers, law library information for noncitizens, and other important information regarding noncitizens with disabilities or limited English proficiency. Lastly, ICE ERO developed LOP and law library flyers so that facilities can post critical information about hours, access, and other information required by the ICE detention standards. The information on the flyers has been translated into eight languages.

III. Conclusion

ICE takes its responsibility to ensure that noncitizens in custody have access to their legal counsel and representatives seriously. Accordingly, all noncitizens have the right to be represented by an attorney and are provided access to their counsel throughout the pendency of their immigration proceedings. Therefore, all those in ICE custody are provided with a list of free legal services and aid resources, including pro bono providers. In addition, ICE actively supports access to legal representation and provides noncitizens multiple avenues to that access, whether in-person or virtually.

Appendix: Abbreviations

Abbreviation	Definition
AOR	Area of Responsibility
COVID-19	Coronavirus Disease 2019
CRCL	DHS Office for Civil Rights and Civil Liberties
DHS	Department of Homeland Security
DOJ	U.S. Department of Justice
DRIL	Detention Reporting and Information Line
ERO	Enforcement and Removal Operations
EOIR	Executive Office for Immigration Review
FY	Fiscal Year
ICE	U.S. Immigration and Customs Enforcement
LA-POC	Legal Access Point of Contact
LOP	Legal Orientation Program
VAV	Virtual Attorney Visitation