



Access to Due Process

February 20, 2024
Fiscal Year 2023 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Deputy Director and Senior Official Performing the Duties of the Director

February 20, 2024

I am pleased to present the “Access to Due Process” report prepared by U.S. Immigration and Customs Enforcement (ICE).

This report was compiled pursuant to direction in the Joint Explanatory Statement accompanying the Fiscal Year (FY) 2023 Department of Homeland Security (DHS) Appropriations Act (P.L. 117-328).

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

The Honorable David Joyce
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Henry Cuellar
Ranking Member, House Appropriations Subcommittee on Homeland Security

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

The Honorable Katie Britt
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,



Patrick J. Lechleitner
Deputy Director and
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement



Executive Summary

The Joint Explanatory Statement accompanying the FY 2023 DHS Appropriations Act (P.L. 117-328) directs ICE to continue to provide the report outlined in P.L. 116-260 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.



Access to Due Process

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I. Legislative Language

This report was compiled pursuant to direction in the Joint Explanatory Statement accompanying the Fiscal Year (FY) 2023 Department of Homeland Security (DHS) Appropriations Act (P.L. 117-328), which continues direction provided in the Joint Explanatory Statement accompanying the FY 2021 DHS Appropriations Act (P.L. 116-260).

The Joint Explanatory Statement accompanying the FY 2023 DHS Appropriations Act (P.L. 117-328) states:

Continuation of Prior-Year Requirements.—ICE shall continue to follow the directives under the following headings in the explanatory statement accompanying the fiscal year 2022 Act (Public Law 117-103), according to the previously directed timeframes, reporting requirements, required sustainment, and guidance:

(13) Access to Due Process

The Joint Explanatory Statement accompanying the FY 2021 DHS Appropriations Act of 2021 (P.L. 116-260) 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.

II. Background

U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) manages and oversees the civil immigration detention system within the United States. In certain circumstances, ICE detains noncitizens to ensure their presence at immigration proceedings and/or in preparation for removal from the United States. ICE detains those who are subject to mandatory detention or those whom an ICE officer determines are a public safety or flight risk during the custody determination process. Detained noncitizens are housed in a variety of facilities across the United States, including, but not limited to, ICE-owned and operated facilities; federal, state, county, or local facilities contracted through intergovernmental service agreements; and contractor-owned and operated facilities. While detained in ICE custody, all noncitizens have access to counsel and legal resources, irrespective of where the detention facility is located.

A. Access to Legal Counsel

ICE is committed to facilitating noncitizen access to legal representatives. While in-person contact visits remain available at the request of legal representatives, noncontact legal visitation (e.g., video-teleconference) is available wherever possible as an alternative for attorneys to communicate with clients in a timely and efficient manner, especially when in-person visitation is not possible or practical. ERO does not track the number of legal visits denied or not facilitated. In FY 2023, ICE's Office of Detention Oversight's inspections did not identify any legal representatives being denied access to their clients.

Facilities continue to provide noncitizens with opportunities to meet privately with their current or prospective legal representatives, legal assistants, interpreters, 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 at no expense to the Government, and those arrested by ICE and placed into removal proceedings are provided with a list of free and low-cost legal services and legal aid resources.

Detained noncitizens are provided with a list of pro bono legal service providers maintained by DOJ EOIR as well as contact information for the DHS Office of Inspector General, the ICE Office of Professional Responsibility (OPR) Integrity Coordination Center, and consular officials. Additional legal service provider lists are available on the Electronic Law Library (ELL), consistent with ICE National Detention Standards for required law library materials. ICE provides to every facility the ELL a step-by-step guide on how to navigate to self-help legal resources and other detention-related information. Noncitizens in ICE detention centers have access to law libraries for at least 5 hours per week. These libraries often contain comprehensive legal materials and are equipped with computers, printers, and photocopiers. Detained noncitizens may submit written requests for legal material not available in the law library.

In accordance with ICE detention standards, communication assistance throughout the detention process is available to noncitizens with disabilities, through the provision of auxiliary aids and

services; limited-English proficient individuals, through bilingual staff and contracts with language services (interpretation and translation) providers; and/or individuals with low literacy. Legal counsel and representatives are permitted to use their own translators and interpreters when communicating with noncitizens who cannot communicate in English, at no cost to the government.

B. Legal Access Issues Identified in ICE Facility Inspections

In FY 2023, OPR Office of Detention Oversight (ODO) conducted 191 facility inspections, 35 of which were “special reviews.”¹ As of September 30, 2023, ODO identified three ICE detention facilities with a total of three complaints related to legal access, including insufficient access to the facility’s law library, a law library tablet that did not display in Spanish when Spanish was selected, and a broken law library computer. Additionally, ODO identified a deficiency at one facility where the facility did not provide enough law library computers based on the detained population count. Where ODO identified deficiencies, each facility was required to take corrective action. ERO reviewed the corrective action taken by each detention facility and ensured the identified issues were addressed and corrected within the required 55 business days.

C. Enhanced Access to Legal Resources and Representation

In FY 2023, ERO made improvements in legal access by: 1) enhancing detained noncitizens’ remote access to legal service providers; 2) increasing coordination within ERO to address legal access issues; 3) collaborating with EOIR to expand Legal Orientation Program (LOP) resources; 4) augmenting public access to legal accommodations information; and 5) increasing legal access information for detained individuals.

Enhancing Remote Legal Service Provider Access

In FY 2023, ERO continues to provide more than 500 free phone minutes to most detained noncitizens and expanded the Virtual Attorney Visitation (VAV) program from 24 to 35 detention facilities. ERO enhanced detained noncitizens’ access to LOP resources by implementing new direct communication mechanisms to LOP providers via tablets and procuring video-teleconferencing equipment to enable LOP providers to simultaneously broadcast LOP group orientations to multiple housing units or rooms. ERO also augmented the LOP materials available to detained noncitizens on the electronic law library.

New Online Platform for the Electronic Filing of G-28s and Scheduling Attorney Visits

In FY 2023, ICE continued to build out ERO eFile, an online registration system that will permit legal representatives to file Form G-28, Notice of Entry of Appearance as an Attorney or

¹ Beginning in FY 2022, OPR ODO started to conduct focused inspections of under 72-hour ICE detention facilities with an average daily population (ADP) of one or more detained noncitizens, over 72-hour ICE detention facilities with an ADP of one through nine detained noncitizens, and other ICE special/emerging detention facilities/programs. This process entails OPR ODO conducting a complete review of several core standards, in accordance with the facility’s contractually required ICE national detention standards. OPR ODO inspection reports are posted in the FOIA Library: <https://www.ice.gov/foia/library>.

Accredited Representative, through ICE.gov and schedule in-person and virtual legal visits at ICE detention facilities. ERO eFile will aid ERO field offices by creating one central system to track legal representatives and integrate electronically filed G-28s with other ICE systems of record. By creating an online legal scheduling system that connects with ERO eFile, ICE will decrease the administrative burden on ERO and detention facility staff of continuously vetting legal representatives and scheduling in-person or virtual legal visits, which will help the agency and detention facility contractors at ICE dedicated facilities better manage legal visitation and monitor the usage of VAV.

As of September 30, 2023, ICE digitized Form G-28, finalized legal representative and ICE user profiles, created a process for electronically signing the Form G-28, and accomplished a partial integration with other ICE systems, including EID, the digital A-file, and ICE Office of the Principal Legal Advisor eService. On September 29, 2023, ICE awarded a Scalable Ways to Implement Flexible Tasks (SWIFT) task order to finance continued development of ERO eFile to fully integrate the online registration system with ICE's information systems and develop a scheduling system for in-person and virtual legal visitation at ICE detention facilities.

ICE Detained Portal

On September 29, 2023, ICE awarded the SWIFT task order to develop the ICE Portal for Detained Noncitizens that will allow noncitizens to access key case information – including forms and documents an ICE officer serves on a noncitizen – and legal resources, as well as facilitate future communication with ICE officers and legal representatives. The ICE Portal will be tested and further developed for the specific population of detained noncitizens in FY 2024 with additional developments and testing into FY 2025.

Virtual Attorney Visitation

In FY 2023, VAV expanded from 24 to 35 detention facilities.² ICE expended more than \$13.8 million to implement and expand VAV in detention facilities. In total, ICE procured 428 privacy booths (or designated rooms) at 33 facilities and financed an increase in personnel costs at ICE detention facilities to support virtual legal visitation and an increase in additional asylum related interviews, specifically at the 9 designated post-Title 42 facilities.³ 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.

² Facilities that added new VAV capabilities in FY 2023 include: Eden Detention Facility, Baker County Facility, River Correctional Center, Jackson Parish Correctional Center, Adams County Correctional Center, Winn Correctional Center, Caroline Detention Facility, Central Arizona Florence Correctional Center, Buffalo Service Processing Center, Torrance County Detention Facility, and IAH Polk Detention Facility. Per the FY 2023 Year End Custody Management Division Population Reporting Summary, 24,204 detained noncitizens have access to virtual legal visitation, or 65 percent of the total detained population.

³ The 9 designated post-Title 42 facilities are Adams County Detention Center, Torrance County Detention Facility, Jackson Parish Correctional Facility, Richwood Correctional Center, Houston Contract Detention Facility, El Valle Detention Facility, South Texas ICE Processing Center, IAH Secure Detention Facility – Polk, and Port Isabel Detention Center

All ICE-funded VAV meetings are offered at no cost to detained noncitizens or legal representatives. The VAV program creates a mechanism for legal representatives to schedule client meetings in advance and can add interpreters easily to VAV calls. Increasing 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 expanding visiting opportunities. Although VAV is not a substitute for in-person meetings, which remain available at all facilities, it does provide an additional method 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.⁴

Free Phone Minutes

On April 22, 2020, in response to the Coronavirus Disease 2019 pandemic, ERO began providing 520 free minutes per month to all noncitizens in facilities where telephone services are provided through ICE's Noncitizen Communication Services contract with Talton Communications, Inc. This ongoing program provides free minutes to call anyone – family, friends, legal representatives – both domestically and internationally. The list of Talton facilities may be found on ICE.gov.⁵ ERO also worked with non-Talton-covered facilities to provide free minutes. As of August 31, 2022, approximately 89 percent of the detained population had access to free minutes.

Expanding Access to Legal Orientation Program⁶ Resources via Tablets

In FY 2023, ERO implemented an initiative that leverages Talton and NCIC Inmate Communications tablets at 26 detention facilities to enhance detained noncitizen access to LOP developed legal access information and resources. The initiative, which expanded from 15 to 26 detention facilities in FY 2023, allows detained noncitizens to sign up for LOP services, message directly with LOP service providers, and be directed to LOP resources via tablets. Preliminary outcomes have shown an increase in LOP attendance and contract detention facility staff and ICE field office staff report a decrease in the amount of legal access questions directed to them. ERO will continue to expand this program where operationally feasible in FY 2024.⁷

Collaborating with DOJ EOIR Office of Legal Access Programs on the Legal Orientation Program

ERO continues to work with EOIR to expand LOP services in ICE detention facilities nationwide. At 35 ICE detention facilities, as of December 2023, the LOP educates noncitizens in immigration court proceedings about the immigration court process, with the goal of enabling individuals to make informed decisions. Working with EOIR, ERO addresses issues identified

⁴ U.S. Immigration and Customs Enforcement, “Virtual Attorney Visitation Program” available at: <https://www.ice.gov/detain/detention-facilities/vav>

⁵ <https://www.ice.gov/doclib/detention/taltonFacilities.pdf>

⁶ See *Collaborating with EOIR on the LOP and National Qualified Representative Program* below for additional information about LOP.

⁷ There are currently 35 detention facilities with an LOP provider. The program expansion is dependent on the availability and capacity of LOP providers at ICE detention facilities.

by LOP providers to ensure service requirements are met. ERO continues to work with field offices to develop facility-specific solutions to requests made by EOIR or LOP providers.

In FY 2023, ICE collaborated with EOIR on the following initiatives:

- Expanded the Tablet LOP initiative from 15 to 26 detention facilities. As noted above, the initiative allows detained noncitizens to sign up for LOP services, message directly with LOP service providers, and be directed to LOP resources via tablets.
- Leveraged congressional funding⁸ to procure video conferencing equipment and finance information technology improvements that enable simultaneous broadcasting of LOP group orientations at 9 ICE detention facilities. These new capabilities will be operational in FY 2024, and are intended to:
 - Enhance the efficiency and accessibility of LOP group orientations at detention locations handling increases in expedited removal processing; and
 - Help ensure access to LOP group orientations by all detained noncitizens prior to their credible fear interviews while also minimizing the size of large-scale group activities.
- Expanded access to legal orientation programming by working with EOIR to obtain LOP materials in more than 30 languages, including audio and video recordings. Where operationally feasible, ERO field offices uploaded these materials onto law library computers nationwide.
- Continued to disseminate information about the American Bar Association (ABA) LOP Information Hotline, which provides access to LOP information for all detained noncitizens over the pro bono platform.
- Updated the Electronic Law Library with LOP resources translated into Bengali, Romanian, and Turkish as well as updated LOP materials in several languages.

Family Group Legal Orientation Program

In August 2023, ERO exercised the second option year period for an interagency agreement (IAA) with EOIR to provide Family Group Legal Orientation Program (FGLOP) services to certain family units. The FGLOP program, provides services for unrepresented families in 11 defined geographical areas,⁹ orients family units to the legal immigration process and provides both multi-family group and single-family group orientations as well as self-help workshops and friend of the court services.¹⁰

⁸ ICE expended \$201,665.95 to procure video conferencing equipment and finance information technology improvements to enable simultaneous broadcasting of LOP group orientations at 9 ICE detention facilities (Otay Mesa, Imperial Regional Detention Facility, Adams County Detention Facility, Jackson Parish Correctional Center, Richwood Correctional Center, Winn Correctional Center, Port Isabel Detention Center, Houston Contract Detention Facility, and El Valle Detention Facility),

⁹ The 11 dedicated docket cities include Boston, Denver, Detroit, El Paso, Los Angeles, Miami, Newark, New York City, San Diego, San Francisco, and Seattle.

¹⁰ The range of services provided by FGLOP include Multi-Family Group and Single-Family Group Orientations, Self-Help Workshops, Pro Bono and Non-Legal Referrals, Pro Bono Placements, and Friend of the Court Appearances and Preparations.

ICE added funds for the FGLOP to develop video scripts in multiple languages to inform respondents about DHS and EOIR practices, the immigration process, available legal options, and other relevant resources. With ICE funding, the ABA is developing 20 short, informational videos for respondents as well as resources in multiple languages to complement the videos. Intended to replace the ABA “Know Your Rights” video developed in 2012, the new short informational videos will cover how noncitizens can obtain information about:

- Checking their immigration court status;
- Changing their address with the court;
- Moving their case to the closest immigration court to them;
- The immigration court process;
- Credible fear interviews;
- The ICE check-in process;
- Obtaining a legal representative and general expectations upon retaining a legal representative;
- Their responsibilities after being granted bond or parole;
- Expectations related to going to court;
- How to prepare for their master calendar hearing;
- How to prepare for their individual hearing;
- Determining whether they are eligible for asylum, withholding of removal, or protection under the Convention Against Torture (CAT);
- Determining whether they are eligible for Special Immigrant Juvenile status, a T or U visa, or protection under the Violence Against Women Act;
- Determining whether they are eligible for Temporary Protected Status;
- Determining whether they are eligible for lawful permanent resident status under the Cuban Adjustment Act;
- Determining whether they are eligible for cancellation of removal;
- Determining whether they are eligible for a family-based petition;
- Voluntary departure and how to request to voluntarily depart;
- The impact of criminal histories on immigration court cases; and
- The appeals process if the immigration judge enters a removal order.

These videos will also be made available for detained noncitizens via the ICE Portal once operational in ICE detention facilities.

Expanding Access and Information to Legal Rights & Know Your Rights Presentations

ERO’s Legal Access Team continued to share “Best Practices for Legal Rights Group Presentations” document which provides an overview of the requirements outlined in the ICE detention standards for legal rights group presentations. ERO continues to engage with the field on sharing best practices and providing guidance in engaging with legal rights group providers.

Increasing Public Access to Legal Accommodations Information

In FY 2023, ERO worked to provide additional information on its public website regarding legal access accommodations at facilities and information for legal representatives. ERO achieved this through the following endeavors:

- Updated facility webpages on ERO’s public website upon request by ERO field offices, to include additional information regarding how legal representatives can communicate with detained clients. Procedures may differ from facility to facility, therefore including this information on the ERO public website ensures legal representatives are aware of and have access to all methods of communication with their clients and prospective clients;
- Several ERO field offices and facilities developed and implemented procedures by which legal representatives can send and receive electronic documents to or from detained noncitizens; and
- Updated the Attorney Information and Resources webpage on ICE.gov to include updated contract information for legal access inquiries as well as information on the online change of address tool on ICE.gov.

D. Increasing Legal Access Information for Detained Individuals

Law Library Resource Manual

ERO updated the *Law Library Resource Manual* to assist facility Law Library Coordinators and other facility staff to recognize what resources and tools are available from ICE and the electronic law library, as well as how best to utilize and share best practices. ERO Legal Access delivered training to more than 100 field office legal access points of contact and facility law librarians on the resource manual and provided a virtual walk-through of the different resources and information available to them to assist in fulfilling detained noncitizen law library requests.

ICE Electronic Law Library: Contract Modification

ERO awarded a new contract modification in December 2022 to increase language accessibility of the current electronic law library database available in ICE detention facilities. The modification enhances the usability of the database for non-English readers and increases the availability of self-help legal resources and other information in three additional languages, for a total of 13 languages in addition to English.¹¹

ICE Electronic Law Library: How to Find Resources in My Language Flyer

ERO updated the bilingual flier *How to Find Resources in My Language*, which guides detained noncitizens on how to navigate the LexisNexis Electronic Hard Drive to learn about and locate self-help legal resources available in their language. The flier was translated into the top 13

¹¹ ICE worked with EOIR to provide translations of LOP resources in Bengali, Romanian, and Turkish, which were loaded on to ICE’s electronic law library. ICE’s electronic law library also has translated resources in Arabic, Chinese, French, Haitian Creole, Hindi, Portuguese, Punjabi, Russian, Spanish, and Vietnamese.

languages other than English and is available in ICE detention facilities. These fliers were also distributed to ERO field offices and facility staff in conjunction with the *Law Library Resource Manual* for Law Library Coordinators.

III. Conclusion

ICE takes seriously its responsibility to ensure noncitizens in custody have access to their legal counsel and representatives. All noncitizens have the right to be represented by an attorney (at no expense to the government) and are provided access to their counsel throughout the pendency of their immigration proceedings. All noncitizens in ICE custody are provided with a list of free and low-cost legal services and legal aid resources. In addition, ICE actively supports access to legal representation and provides noncitizens with multiple avenues to that access, whether in-person or virtually.

Appendix: Abbreviations

Abbreviation	Definition
ABA	American Bar Association
ADP	Average Daily Population
COVID-19	Coronavirus Disease 2019
DHS	Department of Homeland Security
DOJ	U.S. Department of Justice
ELL	Electronic Law Library
EOIR	Executive Office for Immigration Review
ERO	Enforcement and Removal Operations
FGLOP	Family Group Legal Orientation Program
FY	Fiscal Year
IAA	Interagency Agreement
ICE	U.S. Immigration and Customs Enforcement
IT	Information Technology
LOP	Legal Orientation Program
ODO	Office of Detention Oversight
OPR	Office of Professional Responsibility
QR	Qualified Representative
SWIFT	Scalable Ways to Implement Flexible Tasks
VAV	Virtual Attorney Visitation