



Access to Due Process

January 4, 2023

Fiscal Year 2022 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Acting Director

January 4, 2023

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 accompanying the Fiscal Year (FY) 2022 Department of Homeland Security (DHS) Appropriations Act (P.L. 117-103).

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



Chair, House Appropriations Subcommittee on Homeland Security

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 read "Tae D. Johnson".

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

Executive Summary

The Joint Explanatory Statement accompanying the FY 2022 DHS Appropriations Act (P.L. 117-103) directs ICE to provide a report on overall access for attorneys to ICE facilities and directs 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 accompanying the Fiscal Year (FY) 2022 Department of Homeland Security (DHS) Appropriations Act (P.L. 117-103), 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 2022 DHS Appropriations Act (P.L. 117-103) 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 2021 Act (Public Law 116-260), 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. ICE is directed to make detention facility contact information and information regarding facility legal accommodations available on the ICE public website.

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 uses its detention resources to detain noncitizens to secure their presence for immigration proceedings and/or removal from the United States. ICE's use of its detention resources includes detaining 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.

A. Access to Legal Counsel

The Coronavirus Disease 2019 (COVID-19) pandemic posed challenges to facilitating detained noncitizens' access to counsel. ICE's commitment to facilitating noncitizen access to representatives has continued unabated throughout the pandemic, 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 the *U.S. Immigration and Customs Enforcement Enforcement and Removal Operations COVID-19 Pandemic Response Requirements*, visitation with legal representatives will continue unless such is determined to pose a risk to the safety and security of the facility.¹

Noncontact legal visitation (e.g., Skype or teleconference) is available wherever possible to limit potential exposure to COVID-19, but in-person contact visits remain available at the request of the legal representative. ICE ERO does not track the number of legal visits denied or not facilitated and/or the number of facilities that do not meet ICE standards for attorney/client communications. In FY 2022, however, ICE'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, 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 at no expense to the government (see Immigration and Nationality Act §§ 240(b)(4)(A), 292), and all those arrested by ICE and placed into removal proceedings are provided with a list of free and low-cost legal services and aid resources.

Noncitizens are provided with a list of pro bono legal service providers maintained by DOJ EOIR and contact information for the DHS Office of Inspector General, the ICE Office of

¹ *U.S. Immigration and Customs Enforcement Enforcement and Removal Operations COVID-19 Pandemic Response Requirements*, Version 9.0 (June 13, 2022), Visitation, p. 39:
<https://www.ice.gov/doelib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

Professional Responsibility (OPR) Joint Intake Center, and select nongovernmental organizations and advocacy. Additionally, noncitizens can make free calls to consular officials. All these calls are free if made via the pro bono network.

If noncitizens believe access to counsel was 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 to communicate directly with ERO about detention concerns and allegations. The DRIL number is provided on a poster next to phone banks in all housing units and common spaces within detention facilities. The number also is provided in the ICE National Detainee Handbook, which is available to noncitizens in English and 13 other languages.² English- and Spanish-speaking DRIL operators are available Monday through Friday (excluding holidays), from 8:00 a.m. to 8:00 p.m. (Eastern time), to respond to inquiries. DRIL operators also use professional interpretation services when assisting callers who speak languages other than English and Spanish.

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.

B. Legal Access Issues Identified in ICE Facility Inspections

In FY 2022, the ICE OPR Office of Detention Oversight (ODO) conducted 184 facility inspections, 10 percent of which were “focused inspections.”³ As of September 20, 2022, ODO identified 7 ICE detention facilities with a total of 12 complaints related to legal access, including: insufficient or missing transfer notifications to noncitizens and/or legal representatives; lack of privacy panels attached to phones in housing units; orientations that failed to address the availability of pro bono legal services and how to pursue such services in the facility; lack of sign-up sheets and/or instructions on how to attend legal presentations; and incomplete written legal access procedures (e.g., list of pro bono organizations and urgent access to legal counsel and/or the law library) in local facility handbooks. Where ODO identified deficiencies, each facility was required to take corrective action. ERO reviewed the corrective action taken by each detention facility to ensure that the identified issues were addressed and corrected.

² <https://www.ice.gov/detain/detention-management/national-detainee-handbook>

³ Beginning FY 2022, ICE 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 ODO conducting a complete review of several core standards, in accordance with the facility’s contractually required ICE national detention standards.

C. Enhanced Access to Legal Resources and Representation

In FY 2022, ICE ERO made improvements in legal access accommodations by: enhancing detained noncitizens' remote access to legal service providers, increasing coordination within 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.

Enhancing Remote Legal Service Provider Access

In FY 2022, to facilitate improved access to legal resources and representation, ERO continued to provide more than 500 free phone minutes to most detained noncitizens, expanded the Virtual Attorney Visitation (VAV) program from 13 to 24 detention facilities, and enhanced detained noncitizens' access to LOP resources by including LOP materials and by implementing new direct communication mechanisms to LOP providers on the ICE contracted Talton Communications Inc. (Talton) tablets.

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

In September of FY 2022, ICE executed a contract to develop a new online platform to permit attorneys and accredited representatives to file a G-28 electronically with ERO and to provide an automated scheduling system for their visits with detained noncitizens (in person or virtual). The project began at the end of FY 2022 and is slated to continue into FY 2023.

Virtual Attorney Visitation

VAV contract requirements were inserted into additional ICE detention contracts, expanding the program from 13 to 24 detention facilities in FY 2022.⁴ In addition to expanding VAV capabilities to 24 facilities, ICE also leveraged Title V funding to initiate or expand VAV services in 8 detention facilities.⁵ 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.

⁴ New facilities that added VAV capabilities in FY 2022 include: Berks County Residential Center (Philadelphia area of responsibility [AOR]), Clinton County Correctional Facility (Philadelphia AOR), Moshannon Valley Processing Center (Philadelphia AOR), Broward Transitional Center (Miami AOR), San Luis Regional Detention Center (San Diego AOR), South Louisiana ICE Processing Center (New Orleans AOR), Golden State Annex (San Francisco AOR), Houston Contract Detention Facility (Houston AOR), Coastal Bend Detention Center (Harlingen AOR), Karnes County Residential Center (San Antonio AOR), and South Texas ICE Processing Center (San Antonio AOR). Per the latest Daily Population report on September 27, 2022, 12,042 detained noncitizens have access to virtual legal visitation (47 percent of the total detained noncitizen population).

⁵ ICE utilized more than \$530,000 of the Title V funding allocated to expand legal access in the custody setting from the FY 2022 funding received for 'Border Management Requirements' to implement or expand VAV capabilities at Moshannon Valley Processing Center (Philadelphia AOR), Adams County Detention Center (Atlanta AOR), T. Don Hutto Residential Center (San Antonio AOR), Folkston ICE Processing Center (Atlanta AOR), Broward Transitional Center (Miami AOR), South Louisiana ICE Processing Center (New Orleans AOR), and El Valle Detention Facility (Harlingen AOR).

All ICE-funded VAV meetings are offered at no cost to detained noncitizen or legal representatives. The VAV program also creates a mechanism for legal representatives to schedule client meetings in advance and can add interpreters easily to the 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 in expanding visiting opportunities. Although VAV is not a 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.⁶

Free Phone Minutes

On April 22, 2020, in response to the COVID-19 pandemic, ERO began providing 520 free minutes per month to all noncitizens in facilities where telephone services are provided through ICE's Noncitizen Telephone Services contract with Talton. 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.⁷ 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 Program⁸ Resources via Talton Tablets

In April 2022, ERO, in coordination with Talton Communications, EOIR, Field Operations, and the LOP provider, Pennsylvania Immigration Resource Center, initiated a pilot program at the Moshannon Valley Processing Center leveraging the Talton tablets to enhance detained noncitizen communication with the Pennsylvania Immigration Resource Center as well as to grant detained noncitizens access to LOP-developed legal access information and resources. Through this initiative, detained noncitizens can sign up for LOP services, can message directly with LOP service providers, and can be directed to LOP resources. As a result of the pilot's initial positive outcomes, including an increase in LOP attendance and a decrease in the amount of legal access questions directed to contract detention facility staff, the pilot was expanded to 15 detention facilities in FY 2022. ERO will continue to expand this program, where operationally feasible,⁹ in FY 2023.

Collaborating with DOJ EOIR Office of Legal Access Programs on the Legal Orientation Program and National Qualified Representative Program

ICE ERO continues to work with EOIR to expand LOP services in ICE detention facilities nationwide. On September 28, 2021, ERO issued a revised memorandum titled, *Updated Guidance: ERO Support of the U.S. Department of Justice Executive Office for Immigration*

⁶ <https://www.ice.gov/detain/attorney-information-resources>

⁷ <https://www.ice.gov/doclib/detention/taltonFacilities.pdf>

⁸ See *Collaborating with DOJ EOIR on the LOP and National Qualified Representative Program* for additional information about LOP.

⁹ There are currently 34 detention facilities with an LOP provider. The program expansion is dependent on the availability and capacity of LOP providers at ICE detention facilities.

Review, which supersedes the 2017 memorandum and supports increased information sharing and accommodations for LOP. The memorandum details requirements and best practices in the areas of accommodations, information sharing, attendance, legal documentation, and availability of LOP materials and technology. Additionally, the memorandum provides new guidance for accommodating remote LOP programming. Currently at 34 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, ERO addresses issues identified by LOP providers to ensure that service requirements are met. ICE ERO also continues to work with field offices to develop facility-specific solutions to requests made by EOIR or LOP providers. New initiatives in FY 2022 included:

- Providing training to more than 80 supervisory ICE officers on the requirements outlined in the *Updated Guidance: ERO Support of the U.S. Department of Justice Executive Office for Immigration Review* memorandum.
- 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 the American Bar Association LOP Information Hotline, which provided access to LOP information for all detained noncitizens over the pro bono platform.

Family Group Legal Orientation Program

In August 2022, ICE ERO exercised the first option year period for an interagency agreement with DOJ EOIR to provide Family Group Legal Orientation Program (FGLOP) services to family units placed on the Dedicated Docket and enrolled in Alternatives to Detention.¹⁰ The program, which provides services for unrepresented families in 11 defined geographical areas,¹¹ orients family units to the legal immigration process and provides both Multi-Family Group and Single-Family Group Orientations. During the base period of performance (September 8, 2021, through September 7, 2022), FGLOP provided services to more than 9,300 unique participants and more than 6,500 family groups.¹²

¹⁰ On September 2022, Acacia Center for Justice (Acacia) became the prime contractor for FGLOP. Acacia administers FGLOP with subcontractors from a network of nationwide legal service providers, which include the following organizations: Catholic Charities Boston, Rocky Mountain Immigrant Advocacy Network, Michigan Immigrant Rights Center, Diocesan Migrant and Refugee Services, Esperanza Immigrant Rights Project, Catholic Legal Services of Miami, Catholic Charities New Jersey, Catholic Charities New York, American Bar Association's Immigration Justice Project, Immigration Center for Women and Children, and Lutheran Community Services Northwest.

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

¹² 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.

National Qualified Representative Program

ICE ERO, in coordination with DOJ EOIR's National Qualified Representative Program, continues to provide services and address issues concerning individuals deemed mentally incompetent by an immigration judge (IJ) and who were designated a Qualified Representative (QR).

In April 2022, ICE Acting Director Tae Johnson signed ICE Directive 11063.2, *Identification, Communication, Recordkeeping, and Safe Release Planning for Detained Individuals with Serious Mental Disorders or Conditions and/or Who Are Determined To Be Incompetent By An Immigration Judge*,¹³ which updates policies and procedures relating to the identification, treatment, and monitoring of individuals who have serious mental disorders or conditions and/or who are determined to be incompetent to represent themselves by an IJ in removal proceedings.

The Directive updates a previous ICE policy to expand monitoring and reporting requirements to ensure that individuals identified as having a serious mental disorder or condition or who are determined to be incompetent by an IJ are identified and that relevant information is communicated properly to all involved parties, including attorneys of record, legal representatives, and QRs. Further, the Directive provides guidelines on facilitating the safe release, when appropriate, of individuals found to have a serious mental disorder or condition or who are determined to be incompetent by an IJ. Lastly, the Directive establishes factors to consider when making custody determinations for these individuals and requires ICE to develop and implement safe release plans in coordination with the individual's attorney of record, legal representative, or QR.

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

ICE ERO's Legal Access Team developed a *Best Practices for Legal Rights Group Presentations* document that provides an overview of the requirements outlined in the ICE detention standards for Legal Rights Group presentations and includes information and points for ICE and Legal Rights Group providers to consider when initiating Legal Rights Groups or Know Your Rights presentations.

Increasing Public Access to Legal Accommodations Information

In FY 2022, 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:

- Developed the resource *Nationwide Examples & Recommendations for Posting Legal Access-Related Information on ICE.gov Facility Pages*, which is meant to serve as a roadmap for updating facility webpages with pertinent legal access information. The Legal Access Coordinator also provided training to more than 80 supervisory ICE officers in March 2022 on the importance of developing and maintaining informative and up-to-date facility pages as they facilitate communication between outside stakeholders

¹³ <https://www.ice.gov/doclib/news/releases/2022/11063-2.pdf>

and field office/facility staff and help to streamline processes, such as sending mail, faxes, or nonconfidential messages to a detained noncitizen, scheduling virtual attorney client visits, and submitting G-28s.

- Developed the resource flyer *Legal and Other Resources*, designed to educate nondetained individuals on services available to them, including where they can get free legal help and general assistance, as well as where they can learn about their legal rights and immigration options. The flyer also includes information on how to get help from ICE, via the DRIL and Victim Engagement and Services Line, to schedule an ICE check-in appointment.
- Updated facility webpages on ICE ERO’s public website upon request by 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 ICE ERO public website ensures that legal representatives are aware of, and have access to, all methods of communication with their clients and prospective clients.
- Several ICE ERO 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 VAV flyer, modified for facility-specific information, was designed for legal representatives and is available on the ICE ERO public website facility pages where VAV is available.
- A new VAV multiple-language notice, which was translated into the top 11 languages, other than English, spoken in the ICE detention network that informs detained noncitizens of the availability of virtual legal visitation capabilities at the facility.

D. Increasing Legal Access Information for Detained Individuals

Facility Legal Resource Guide

ICE ERO continues to increase legal resources and information available to noncitizens. In FY 2022, ICE ERO updated the *Facility Legal Resource Guide* for DRIL call analysts. The *Facility Legal Resource Guide* provides an overview of legal services in each ICE detention facility. Listed by AOR, the guide contains information specific to each detention facility including the law library hours of operation and available resources, the availability of LOP and other legal rights group presentations, and providers onsite or telephonically, as well as other legal materials available to detained noncitizens. Additionally, the guide has a new section, “Communicating with Legal Representatives Information,” which details in-person and virtual (if available) attorney visitation hours, and information on availability of electronic exchange of documents. Within the guide, the availability of the American Bar Association Detention and LOP Line and the United Nations High Commissioner for Refugees hotline is also noted, as well as the fact that legal representatives should be directed to the Attorney Information and Resources (<https://www.ice.gov/detain/attorney-information-resources>) and the facility pages (<https://www.ice.gov/detention-facilities>) on ICE.gov for further legal access related information.

Law Library Resource Manual

ICE ERO developed 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. The ICE ERO Legal Access Coordinator delivered training to more than 100 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

ICE ERO executed a contract modification in September 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.

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

ICE ERO developed the bilingual flyer *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 flyer was translated into the top 10 languages, other than English, in ICE detention facilities.

III. Conclusion

ICE takes seriously its responsibility to ensure that 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. Therefore, all those in ICE custody are provided with a list of free and low-cost legal services and 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 |
|---------------------|--|
| Acacia | Acacia Center for Justice |
| ADP | Average Daily Population |
| AOR | Area of Responsibility |
| COVID-19 | Coronavirus Disease 2019 |
| DHS | Department of Homeland Security |
| DOJ | U.S. Department of Justice |
| DRIL | Detention Reporting and Information Line |
| EOIR | Executive Office for Immigration Review |
| ERO | Enforcement and Removal Operations |
| FGLOP | Family Group Legal Orientation Program |
| FY | Fiscal Year |
| ICE | U.S. Immigration and Customs Enforcement |
| IJ | Immigration Judge |
| LOP | Legal Orientation Program |
| ODO | Office of Detention Oversight |
| OPR | Office of Professional Responsibility |
| QR | Quality Representative |
| Talton | Talton Communications Inc. |
| VAV | Virtual Attorney Visitation |