



LEGAL ORIENTATION PROGRAM  
Evaluation and Performance and Outcome  
Measurement Report, Phase II

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## Executive Summary

Since 2003 Congress has funded the Executive Office for Immigration Review (EOIR) of the U.S. Department of Justice to administer the Legal Orientation Programs (LOP). The LOP seeks to educate detained persons in removal (deportation) proceedings so they can make more informed decisions, thus increasing efficiencies in the immigration court and detention processes. The LOP provides detained persons with basic information on forms of relief from removal, how to accelerate repatriation through the removal process, how to represent themselves *pro se*, and how to obtain legal representation. The LOP is designed to provide this information to detained persons prior to the first hearing in their removal proceedings before EOIR (the “immigration courts”). The LOP is offered nationally by nonprofit legal service providers who work collaboratively with local immigration courts, detention facilities, and Immigration and Customs Enforcement (ICE).

The LOP involves four levels of service:

- **Group orientations** are presentations by attorneys or paralegals (under attorney supervision) that offer a broad overview of the immigration court process and basic information on relief from removal or ways to expedite the removal process.
- **Individual orientations** are one-on-one meetings generally following the group orientation. In these meetings, detainees ask LOP attorneys and paralegals more detailed questions about process, specific defenses, or forms of relief from removal.
- **Self-help workshops** are small workshops led by LOP staff for detainees who will be handling their cases *pro se*. In these workshops, individuals can prepare and practice with other persons who will be pursuing similar defenses or applications for relief from removal.
- **Referrals to *pro bono* attorneys** are made for some indigent detainees who are unable to proceed *pro se* or whose cases could benefit from the assistance of legal representation.

Since 2005, EOIR has contracted with the Vera Institute of Justice (Vera) to manage the LOP. Vera subcontracts to nonprofit organizations to provide LOP services, and Vera staff monitor, oversee, and measure the performance of the program. The contract also required Vera to implement a Performance Outcome and Measurement Plan and undertake a program evaluation to document LOP services, assess if the LOP is working as intended, determine any impact of the program and the significance and extent of any impact, and make recommendations for ongoing program improvements. This report summarizes research activities and findings as of September 2007.

### Highlights from the LOP Evaluation

In 2006, the LOP reached more than 25,500 detainees. From the program’s inception in 2003 through September 2007, the program has reached more than 100,000 detained persons. As the

use of detention—and bed space in many of the facilities hosting the LOP—has expanded, the program has continued to serve more people each year. However, as the expansion of detention has outpaced the expansion of funding for the Legal Orientation Program, the numbers of people receiving LOP services represents a shrinking percentage of the overall detained immigration court population each year.

Vera’s analysis—a combination of statistical analysis and interviews with LOP stakeholders, including participants, providers, immigration judges, court administrators, detention facility staff, and ICE employees—identified numerous differences in case outcomes between LOP participants and “comparison groups” of detained persons who did not participate in the LOP. These differences, described below, suggest possible benefits of the LOP for those detained persons it is able to serve.

#### *LOP participants move through the courts faster*

Detained LOP participants have immigration court case processing times that are an average of 13 days shorter than cases for detained persons who did not participate in the program. This suggests that the LOP may have important resource-saving benefits for the immigration courts and immigration detention system. The faster detained cases are completed, the sooner detained persons are eligible to be released from custody or removed from the United States. This can free available bed space at detention facilities and, at least in theory, substantially reduce costs for the federal government.

#### *LOP participants receive fewer in absentia removal orders*

Nationwide, very few detained persons are released on bond or recognizance. However, when released from detention prior to the completion of their immigration court cases, LOP participants received 7 percent fewer in absentia removal orders, meaning that they appeared for court hearings at greater rates than comparison groups, especially when pursuing relief from removal.<sup>1</sup> Low rates of in absentia removal orders were even more pronounced for LOP participants who received intensive levels of LOP service (meaning they participated in more than group orientations). Immigration court and detention system stakeholders are concerned with reducing the numbers of persons who receive in absentia removal orders. Our analysis of the LOP supports conclusions from studies of other court systems that when respondents have access to legal information and understand the court process, they are less likely to receive in absentia removal orders.

#### *The LOP can effectively prepare detained respondents to proceed pro se*

The LOP is not a substitute for legal representation. However, some detained persons who received intensive LOP services (more than group orientations) and represented themselves pro se achieved case outcomes approximating those associated with legal representation. LOP

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<sup>1</sup> An in absentia removal order occurs when a person fails to appear in immigration court, provided the government shows that the person is removable and that required procedures occurred.

participants who represented themselves pro se were also more likely to receive grants of voluntary departure than detainees who did not participate in the LOP.<sup>2</sup>

*Detention facility staff state that the LOP improves detention conditions*

Detention facility employees at LOP sites reported that they have observed a reduction in behavior problems when detainees have access to legal information. They also stated that the LOP makes detention “safer” and “more humane.”

*Immigration judges state that the LOP increases immigration court efficiency*

Immigration judges at LOP sites report that respondents who have attended the LOP appear in immigration court better prepared, are more likely to be able to identify the relief for which they are statutorily eligible, to not pursue relief for which they are ineligible, and to have a better understanding of the immigration court process, thus helping to improve court efficiencies.

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<sup>2</sup> Voluntary departure is a procedure that allows an individual to leave the United States, usually within 60 or 120 days, at his or her personal expense, thus avoiding some of the negative consequences of a removal order.

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## I. Introduction

This report begins with a two-part introduction designed to place it in proper context. The first part of the introduction presents a history of the Legal Orientation Program (LOP). The second provides background pertinent to measuring the LOP's performance and impact.

### History of the Legal Orientation Program

In 2002, Congress appropriated \$1 million to the U.S. Department of Justice to carry out Legal Orientation Programs (LOP)—programs that refer cases to volunteer attorneys and conduct individual and group orientations on immigration law and procedure—for detained persons in removal proceedings (“detained proceedings”) before the Executive Office for Immigration Review (EOIR), the office within the Department of Justice that manages U.S. immigration courts. EOIR, confronted with a significant increase in the number of detained proceedings resulting from an expanded use of detention, wanted to explore innovative ways to ensure that cases were processed in a timely manner while also increasing access to *pro bono* legal programs for detained persons. Congressional interest in funding the LOP was in part motivated by the success of a pilot program run by EOIR in 1998. In an evaluation of that pilot program, EOIR concluded that “rights presentations” for detained persons helped the Department of Justice ensure that all respondents had a clear understanding of their procedural rights, led to cases being completed more quickly, and increased availability of representation, usually *pro bono*, for detainees with “potentially meritorious claims to relief.”<sup>3</sup>

EOIR modeled the LOP, which is housed within the agency's Legal Orientation and Pro Bono Program, on a project that relied on independent nonprofit legal advocates to advise individuals in immigration detention of their rights. The Florence Immigrant and Refugee Rights Project (“Florence Project”) developed a “rights presentation” model in response to a local immigration judge's concern that indigent persons detained by the legacy Immigration and Naturalization Service (INS) at its Florence, Arizona, Service Processing Center were at risk of having their statutory rights violated.<sup>4</sup> The project recognized that *pro bono* attorneys from local

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<sup>3</sup> Executive Office for Immigration Review (EOIR). Evaluation of the Rights Presentation. Washington, DC: No Date. <http://www.usdoj.gov/eoir/statpub/rtspresrpt.pdf> (last accessed August 31, 2007). “Relief” encompasses a variety of requests to the immigration court that, if granted, will prevent the respondent from being ordered removed from the United States. Examples include asylum, withholding of removal, cancellation of removal, and adjustment of status. Voluntary departure, which if granted still requires the respondent to leave the country, is considered by some to be partial relief.

<sup>4</sup> When Congress created the Department of Homeland Security in 2003, the functions of the Immigration and Naturalization Service were devolved into two new agencies: the United States Citizenship and Immigration Services (USCIS) and Immigration and Customs Enforcement (ICE). Enforcement functions formerly performed by the INS were transferred to ICE, whose responsibilities include administration and oversight of detention and removal operations.

firms could help ensure that detainees' rights were protected.<sup>5</sup> Throughout the early 1990s, the Florence Project pioneered and refined a service model that encouraged people in detention to play an active role in their own cases, whether or not they were represented by counsel. Rather than focusing their limited resources on representing a small number of detainees, project attorneys strove to provide all detained individuals with accurate legal information from which to make more informed decisions about how to proceed with their immigration court cases. The project also worked to dispel common misconceptions about the immigration court process and thus decrease anxiety, confusion, and discomfort about immigration proceedings.

As the Florence Project started to gain recognition, federal officials became interested in exploring its impact on the immigration system. In 1992, the General Accounting Office (GAO) conducted a study of the project and concluded that its rights presentations resulted in substantial time-savings for the government.<sup>6</sup> The GAO report concluded that immigration hearings at the Florence immigration court took less time because the detainees who appeared in immigration court were already familiar with the removal proceeding process and their eligibility for forms of relief from removal.

A 1994 bipartisan Senate resolution commended the Florence Project's work and recommended that the Department of Justice test similar programs at other INS Service Processing Centers.<sup>7</sup> In the fall of 1998, the Department of Justice established three 90-day pilot projects that provided daily rights presentations to INS detainees at the Port Isabel Detention Center in Los Fresnos, Texas (administered by the South Texas Pro Bono and Asylum Representation Project, or ProBAR); the San Pedro Detention Facility in San Pedro, California (administered by Catholic Legal Immigration Network, Inc., or CLINIC); and the Florence Service Processing Center in Florence, Arizona (administered by the Florence Project). The detention centers served by these programs were among the three largest in the country. In all three centers, the majority of detained individuals spoke either English or Spanish—a circumstance which simplified logistics.

In 2002, in response to an EOIR evaluation which found that the pilot programs had resulted in cost savings and more efficient immigration courts, Congress appropriated \$1 million in fiscal year 2002 to develop the LOP by expanding the pilot project model to detention facilities across the nation. EOIR contracted with Norwich University to oversee LOP operations and administer subcontracts to local nonprofit organizations carrying out these operations. In early 2003, Norwich selected six nonprofit organizations to provide LOP services to detained adults. Three of these organizations had participated in the Department of Justice's 90-day pilot projects, though only one of these—ProBAR—continued to provide services at the original pilot project site; the Florence Project began providing services at the Eloy Contract Detention Facility in Eloy, Arizona, while CLINIC relocated the LOP from San Pedro to the Mira Loma Detention

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<sup>5</sup> Florence Immigrant and Refugee Rights Project, "Florence: The 'Justice and Efficiency Model,'" April 5, 2003.

<sup>6</sup> General Accounting Office (GAO). *Immigration Control: Immigration Policies Affecting INS Detention Efforts*. Washington, DC: GAO, 1992.

<sup>7</sup> Senate Resolution 284, 103d Congress 2d Session (1994).



Facility in Lancaster, California. The other three organizations to which Norwich University awarded subcontracts included the Erie County Bar Association Volunteer Lawyers Project (VLP), which worked at the Buffalo Federal Detention Facility in Batavia, New York; the Northwest Immigrant Rights Project (NWIRP), which served detainees in Seattle, Washington; and the Rocky Mountain Immigration Advocacy Network (RMIAN), which worked at the Aurora Contract Detention Facility in Aurora, Colorado. LOP operations were introduced incrementally at these six sites over the course of 2003. In 2004, Norwich University expanded the LOP to the El Paso Service Processing Center in El Paso, Texas; services at this site were provided by CLINIC.

### **Criteria for LOP Site Selection**

EOIR and Norwich University worked together to select the original six LOP sites. They used a number of criteria to do so. Among the most important of these was the requirement that a site have low rates of representation and limited availability of legal services, thus ensuring that the government invested in those sites with the greatest need. EOIR and Norwich also looked for sites with high numbers of detained persons in removal proceedings; sought out sites in diverse locations to determine whether the LOP could achieve success in different environments; and made a strategic decision to place the LOP in sites that primarily served English and Spanish speakers. (Because English and Spanish were the predominant language groups among people in immigration detention, EOIR planned to identify and implement best practices for serving these groups before expanding the program to locations with greater linguistic diversity.) Finally, the likelihood that staff from the local immigration court, the local INS (and later ICE) office, and the local detention facility would support the program was an important consideration in site selection.

In evaluating proposals from potential subcontractors, EOIR and Norwich University considered the experience of local nonprofit staff and the availability of “matching resources” or other in-kind program services already in place at local nonprofits.

### **Involvement of the Vera Institute of Justice**

In 2005, replacing Norwich University, EOIR made the Vera Institute of Justice the primary LOP contractor. Vera agreed to administer, monitor, and provide technical assistance to the LOP and to carry out research on the performance and impact of the LOP. Due to budgetary constraints in 2005, Vera and EOIR ended the LOP program at the Buffalo Federal Detention Facility. In late 2006, Congress doubled the appropriation for the LOP; consequently, EOIR expanded the program to include six additional sites and also reinstated the Buffalo program.

Figure 1, below, lists the sites at which LOP programs have operated since 2003 (listed by site name assigned by Vera), hearing location code (used to indicate the location of the applicable immigration court), facility name and location, subcontractor (the “LOP provider” referred to in this report), and program start date.

**Figure 1: Legal Orientation Program  
Subcontractors, Hearing Locations, and Facilities, 2003-2008**

Site Name	Court Hearing Location*	Facility Name	Detention Location	Subcontractor	Program Start Date
Port Isabel	PIS	Port Isabel Service Processing Center	Los Fresnos, TX	ABA South Texas Pro Bono Asylum Representation Project (ProBAR)	February 18, 2003
Batavia	BTV	Buffalo Federal Detention Center	Batavia, NY	Erie County Bar Association Volunteer Lawyers Project (VLP)	February 21, 2003**
Eloy	EAZ	Eloy Detention Center (CCA)	Eloy, AZ	Florence Immigrant and Refugee Rights Project (FIRRP)	March 7, 2003
Seattle	AIR	Northwest Detention Center (Corrections Services Corporation)	Tacoma, WA	Northwest Immigrant Rights Project (NWIRP)	March 17, 2003
Mira Loma	LAN	Mira Loma Detention Facility	Lancaster, CA	Catholic Legal Immigration Network (CLINIC)	May 27, 2003
Denver	WSI	Aurora Detention Facility (GEO)	Aurora, CO	Rocky Mountain Immigrant Advocacy Network (RMIAN)	June 22, 2003
El Paso	EPD	El Paso Service Processing Center; Otero County Prison	El Paso, TX	Diocesan Migrant & Refugee Services (DMRS)***	June 2, 2004
Houston	HOD	Houston Service Processing Center (CCA)	Houston, TX	University of Houston Immigration Law Clinic	October 1, 2006
Newark	NEW	Middlesex County Correctional Facility; Hudson County Correctional Facility	New Jersey	Legal Services of New Jersey (LSNJ)	October 1, 2006
Laredo	LAR	Laredo Processing Center (CCA)	Laredo, TX	Lutheran Immigration and Refugee Services (LIRS); Bernardo Kohler Center (BKC)	October 1, 2006****
San Antonio	SAD	Pearsall Immigrant Detention Center (GEO)	Pearsall, TX; San Antonio, TX	Political Asylum Project of Austin (PAPA)	October 1, 2006
San Pedro	SPD	San Pedro Service Processing Center	San Pedro, CA	Legal Aid Foundation of Los Angeles (LAFLA)	October 1, 2006****
York	YOR	York County Prison	York, PA	Pennsylvania Immigration Resource Center (PIRC)	October 1, 2006
San Diego	CCA	Otay Mesa Detention Facility (CCA)	San Diego, CA	ABA Immigration Justice Project (IJP) of San Diego	January 2, 2008

**Notes:** \* This column lists the EOIR code for the court hearing locations in question.

\*\* The Batavia program was not operational between May 19, 2005, and October 1, 2006.

\*\*\*The subcontract for the El Paso LOP was devolved from CLINIC to DMRS in 2006.

\*\*\*\* Sites highlighted in gray are no longer operational. Services in Laredo were terminated in September 2007. The San Pedro Service Processing Center was temporarily closed in October 2007, and LOP services were terminated at that time.

## Measuring Performance and Impact of the LOP

During the LOP's first year of operation, in 2003, Norwich University reviewed program data and conducted a small stakeholder survey. The survey and data review suggested that the LOP had increased the efficiency of immigration court proceedings; improved access to legal services for detainees in removal proceedings; decreased case completion times; and increased the number of meritorious applications for relief filed with the immigration court.<sup>8</sup> These findings were consistent with EOIR's evaluation of the 1998 pilot projects and the 1992 GAO study of the Florence Project. However, none of these studies were comprehensive enough to rigorously assess the potential impact of the LOP.

As a result, when EOIR contracted with Vera in 2005, it also asked that the Institute conduct a systematic study of the ways in which the LOP might benefit program participants as well as the immigration court and detention systems. In addition, EOIR asked Vera to develop and document performance measurement methods for the LOP, to identify best practices, and to formulate recommendations for program changes and improvements.

To ensure that the programs they support are cost-effective, private entities and government agencies alike increasingly require that those programs be rigorously evaluated. Measuring the performance and impact of programs can also lead to recommendations for change, thereby making programs more efficient, ensuring that they are sustainable, and facilitating the process of replicating effective practices elsewhere.<sup>9</sup> In fact, the Organization for Economic Cooperation and Development (OECD) has argued that program evaluation and performance measurement are essential to good governance, as these procedures help ensure that government resources are being used effectively and spent on activities with measurable outcomes.<sup>10</sup> The Department of Justice's 2007-2012 strategic plan similarly emphasizes the importance of evaluating the programs it sponsors, noting that formal, methodologically rigorous program evaluations that examine fundamental questions of program design, implementation, and impact cannot be substituted by internal audits, inspection, and review processes.<sup>11</sup> While these latter activities are essential for ensuring accountability, their methods are distinct from those used in social scientific studies. Additionally, agencies can strengthen their credibility when they contract with independent researchers to evaluate a program.

In general, there are three types of evaluations: process, performance, and outcome evaluations. A process evaluation documents how a program was intended to work (its blueprint), how it actually works (fidelity to the blueprint), and who is involved in program

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<sup>8</sup> Unpublished survey questionnaire results submitted by Norwich University to EOIR (July 2004).

<sup>9</sup> Aucoin, Peter. *Decision-Making in Government: The Role of Program Evaluation*. Discussion Paper, 2005. [http://www.tbs-sct.gc.ca/eval/tools\\_outils/Aucoin/Aucoin\\_e.asp](http://www.tbs-sct.gc.ca/eval/tools_outils/Aucoin/Aucoin_e.asp)

<sup>10</sup> Odile Sallard. *Organisation for Economic Cooperation and Development. The OECD Observer*. Paris: Nov 2005 (252/253), p. 9.

<sup>11</sup> Department of Justice Strategic Plan 2007-2012, accessed September 9, 2007. [http://www.usdoj.gov/jmd/mps/strategic2007-2012/appendix\\_c.pdf](http://www.usdoj.gov/jmd/mps/strategic2007-2012/appendix_c.pdf)

activities such as implementation, organization, and administration. One can think of a process evaluation in terms of *what* was done. A performance evaluation studies the extent to which programs function as they were intended to (in other words, how the blueprint translates into practice—especially with regard to services delivered or other outputs). One can think of a performance evaluation in terms of *how much* was done. Finally, an outcome evaluation assesses whether the outcomes changed over the course of the program and whether the program was responsible for any observed changes. One can think of an outcome evaluation in terms of *how well* the program did what it was supposed to do.

EOIR asked Vera to develop a plan for incorporating all three types of evaluation in its study of the LOP. In particular, Vera was asked to address the following research questions:

- **Process:** *What* were/are the planned and expected activities of the LOP?
- **Performance:** *To what extent* is the LOP working as intended? What services is it providing, and to whom? How could it work more effectively?
- **Outcome(s):** Did any *desired change* occur that might be attributed to the program? To what extent can the desired changes be attributed to the LOP?

EOIR additionally requested that Vera draw on its research findings to make recommendations for program modifications or improvements.

## Evaluation Questions

EOIR asked Vera to collect and analyze data on how the LOP is working and its impact on the immigration courts and detained persons; to identify legal services that are likely to improve the efficiency of the courts and affect case outcomes; to conduct interviews with detainees and other project stakeholders; and to help the agency identify data sources that might be used in a cost assessment.

Prior to addressing these questions directly, Vera researchers worked with LOP providers, EOIR staff, Vera program managers, detention facility staff at LOP sites, and detainees to define the goal (desired impact) and objectives (activities necessary to achieve that impact) of the LOP. These discussions resulted in agreement on two primary objectives and nine subsidiary objectives, described below.

### *Primary objectives.*

The LOP should improve

- (a) legal access for detained persons in removal proceedings by providing impartial, accurate orientations to the immigration court process and providing detainees with information to help them determine how to proceed in immigration court and
- (b) efficiencies in the immigration detention and immigration court process for detained persons in removal proceedings. (Efficiencies may be defined as the best possible

allocation of resources [maximum benefits for minimum costs] or as enhancements of systems and processes that enable them to work more smoothly.)

*Subsidiary objectives.*

1. Ensure detainees have a general understanding of what the removal and immigration court processes entail and the rights of detained persons in these processes; how to self-screen for eligibility for relief (using information learned in orientations as well as handouts and law library materials); how to access forms of relief when eligible; how to prepare for the immigration court process; how to access legal representation if available; and what representation entails.
2. Teach detained persons who want to leave the United States how to do so as quickly as possible, and should educate them about the consequences of removal from and unlawful return to the United States.
3. Help detained persons identify their eligibility under the law for forms of relief from removal, and should inform ineligible detainees of the risks of filing “frivolous claims.”
4. Help detained persons who want to fight their cases access either legal representatives (paid or pro bono) or self-help (pro se) services.
5. Teach detained persons how to effectively act on the decisions they have made about how to proceed in their removal proceedings.
6. Educate detained persons on how to respond to routine questions asked by an immigration judge at a Master Calendar Hearing (e.g., answers should be given orally and in a voice loud enough to be picked up by a tape recorder; respondents should answer truthfully).<sup>12</sup>
7. Teach unrepresented persons how to effectively represent themselves pro se.
8. Reduce detainee anxiety about the removal and immigration court processes by providing factual information and treating detained persons with dignity and respect.
9. Be carried out by independent legal representatives who work in collaboration with local detention facility, ICE, and EOIR staff.

In addition to studying the LOP’s progress in meeting these objectives, Vera researchers considered the extent to which the LOP might also assist EOIR in meeting some of the agency’s priorities as outlined in its 2005-2010 Strategic Plan. In particular, we focused on three agency-wide objectives described in the EOIR Strategic Plan that intersect with the objectives of the LOP. First, objective 1.1 of that plan states that EOIR “must eliminate case backlogs by the end of fiscal year 2008,” and “must render ‘expeditious decisions’ and continue to reduce ‘frivolous’ applications.” Objective 1.2 of the plan commits the agency to “implement improved caseload

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<sup>12</sup> Master Calendar Hearings deal with procedural matters. At an initial Master Calendar Hearing, respondents are informed of the relevant rights and charges and are asked whether they dispute and want to oppose the government’s allegations. Master Calendar Hearings are distinguished from merits hearings where testimony is taken and issues are tried before the immigration judge.

management practices,” which includes “studying failure to appear rates.” Finally, EOIR’s plan commits the agency to “encourage pro bono representation,” noting that, “effective representation can add value to the adjudicative process.” In our discussion of findings and recommendations, we detail ways in which the LOP may be an efficient and cost-effective method of aiding EOIR in meeting these objectives.

## **Evaluation Methods**

Any evaluation requires a clear statement of the research question or problem and a baseline of comparison, which in this case asks what would have happened in the absence of the LOP. That is, what if the LOP had not been available? In order to accurately answer “what if” questions, program evaluations generally employ an experimental research design. This classic method of obtaining a baseline of comparison enlists some people in the program or “experiment,” while others, randomly assigned to a control group, receive no program services. In theory, both groups are subject to the same institutional and environmental influences except for the program or intervention being tested. Generally, control group experiences and outcomes are measured in parallel with participants’ experiences. In the case of evaluating the impact of the LOP, however, we determined the use of a classic experimental design to be inappropriate for two major reasons: (1) feasibility and (2) ethics.

First, the LOP was designed as a voluntary program and was operating as such at all sites. It was not feasible to alter this basic tenet of the program. In essence, programmatic demands trumped research preferences.

Second, there is an ethical issue involved in research with detained or incarcerated populations. The LOP aims to provide all detained persons in immigration court proceedings with information on immigration law and procedure, to offer guidance to those individuals appearing pro se, and refer cases with potential relief to pro bono attorneys. When we designed our research, LOP providers expressed a concern that it would be unethical to only provide legal services to one group of detainees while depriving detainees assigned to the control group access to legal information.

Given the institutional constraints beyond our control and ethical concerns expressed by program providers, we determined that randomly assigning individuals to control or experimental groups, though the most scientifically sound method, was not feasible in this case. The alternative to an experimental design is to employ a quasi-experimental design, which divides participants into groups for comparative purposes but employs a non-random assignment of persons to these groups. A quasi-experimental design does not permit the same levels of certainty that an outcome is the product of the program being tested, but it is the next best way of measuring program impact when random assignment is not practical or feasible.

The non-experimental configuration of this research, therefore, makes all findings and recommendations based on them descriptive, suggestive, and exploratory rather than confirmed. This was a shortcoming Vera and EOIR jointly accepted when undertaking this study. Subsequent work will be needed to strengthen the study design and to lead to more robust,

confirmatory analyses and inferences. That stated, and the limitations of quasi-experimental designs noted, quasi-experimental designs are commonly used to organize first-generation research in the absence of experimental alternatives or where experimental alternatives are not attractive or possible because of the heavy investment in time and resources they usually entail. These exploratory designs comprise comparative rather than control-group analyses that can nonetheless preliminarily and tentatively reveal patterns across groups—patterns that are of great interest and are often noteworthy to program staff and policymakers alike and that often deserve a more focused, sustained, and substantial investment of resources than may be available. Throughout the analytical portions of this report, our findings are couched in comparative terms whenever possible, which is so for virtually all analyses. Sometimes we compare statistics before and after the introduction of the LOP at particular sites, while in other instances we compare outcomes based on participation in the LOP.

In summary, we determined, in consultation with LOP stakeholders, that the best alternative to random assignment was to analyze patterns at LOP sites in the years immediately before and after the program began, and then compare LOP participants with comparison groups comprising persons who were also detained but who did not participate in the LOP and attended immigration court in sites not hosting the LOP. Below and throughout this report we describe in greater detail our methods for organizing LOP participants and other detained persons into groups for analysis.

## **Evaluation Work Plan**

Because the LOP is dependent on Congress to allocate funds to the program each fiscal year, Vera and EOIR divided the contractually required Performance Outcome and Measurement Plan (POMP) and evaluation activities into three discrete phases of work, each of which would build on the previous, and each of which could stand alone if need be (in the absence of any additional funding from Congress). This report represents our interim findings following completion of Phase II of the POMP.

In the first phase of research, Vera documented LOP performance, and “cleaned” data compiled by Norwich University, the prior contractor, in order to produce statistics for EOIR that showed the numbers of persons served by the LOP over the life of the program. In that phase of research, Vera also developed and implemented a program service database, LOPster, that subcontractors use to track and monitor their performance by recording information on all LOP participants in standardized ways. Vera researchers also began to interview program stakeholders in order to document their impressions of where the LOP might have an impact. This was important in order to narrow the focus of the evaluation of the LOP’s impact, particularly because EOIR had very limited funds to assign to evaluation activities. Finally, in the first phase of evaluation, researchers analyzed aggregate administrative data from EOIR to identify trends in the immigration courts in the 36 months immediately before and after the LOP was implemented. By comparing macro-level differences between immigration courts hosting the LOP and other immigration courts around the country, Vera researchers were able to identify different patterns and trends that were occurring nationwide before and after the LOP began.

Working in close consultation with EOIR staff, we plotted variables such as case processing time, representation rates, and grant rates. Knowing these patterns and trends enabled the research staff to gauge the extent to which any observed positive outcomes associated with LOP might simply reflect trends that should not be attributed to the LOP. We compared different variables and immigration courts before identifying a few key points of difference between immigration courts hosting the LOP and other immigration courts and a few key patterns and trends that appeared to begin around the time LOP services began.

With additional funding from EOIR for a second phase of research, Vera researchers continued to monitor and document program services and statistics. We matched data collected by LOP subcontractors with immigration court data in order to track LOP participants' cases in the immigration courts. We examined several variables but focused our attention, at EOIR's request, on case processing time, representation rates, rates at which LOP participants pursued various forms of relief from removal, case outcomes (defined in our study as the immigration judge's final case decision in a removal proceeding), and in absentia removal orders.<sup>13</sup> We generated descriptive information about LOP participants' immigration court cases in general, and then analyzed this information for different subgroups of LOP participants.<sup>14</sup> After analyzing

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<sup>13</sup> For the purposes of this research, Vera defines a case as the sum of all the proceedings involving a single respondent before the immigration courts. This means in our analysis a single case may contain numerous proceedings and numerous applications for relief that have been initiated and decided in the time between an initial Master Calendar Hearing and the final decision issued by the immigration judge in the last proceeding in the case. In many reports authored by EOIR, cases are evaluated and reported at the proceeding level. Vera researchers determined that for the purposes of our study, it would be confusing to report on proceedings as opposed to what we defined as cases. This is because in EOIR's case management system, each case—from initial Master Calendar Hearing to final case decision—may be composed of several proceedings, which are distinguished in EOIR's data by generation numbers that descend from 99. When a respondent's detention status or hearing venue changes, the case before the immigration courts is typically transferred from one hearing location or immigration judge to another. When this occurs, the first proceeding in the case is closed, and a new proceeding is opened in the immigration court records. However, the case has not been concluded and reopened. For example, if an asylum seeker is detained at the initial Master Calendar Hearing and is later released and granted a motion to change of venue to a different hearing location, the pending asylum application remains active as it moves from one immigration court and judge to another, but a new proceeding is opened in EOIR's records. Thus, the number of days in each proceeding does not reflect how long a case was active in the immigration courts.

Additionally, because we wanted to measure any potential impact of the LOP on the immigration courts using the most consistent measures, we made a decision not to include in case processing time any days that might have accrued after the immigration judge's decision was issued. When either party (ICE or the respondent) reserves the right to appeal, the case is not completed until the appeal deadline has passed with no appeal filings, until a decision has been issued on the appeal by the Board of Immigration Appeals, or, if a case is remanded to an immigration judge, until a decision has been issued. There are other scenarios that might also prevent a case from being immediately completed (or closed) after the immigration judge issues a decision. Because of all these reasons, our definition of case processing time may not match definitions used by EOIR or other researchers. However, we believe our definition does allow us to most accurately assess time for our purpose, which is to see if LOP is correlated with any reduction or increase in the number of days a matter remains before the immigration courts (see Appendix II for more detailed description of how the data was organized and analyzed).

<sup>14</sup> As described later in the report, we defined subgroups by detention status (detained throughout the immigration court process versus released before the final decision was issued), representation status (legal representation at some point in the case versus no legal representation), type of application for relief from removal filed with the immigration courts, and in some instances, by nationality, language, or the statute used by ICE to charge the respondent's "removability." Many research studies create subgroups according to age (generally determined by



data on LOP participants, we created a comparison group comprising detained persons who did not participate in the LOP and whose initial Master Calendar Hearings were scheduled in courts without the LOP. In our discussions and findings of the program’s process, performance, and outcome, we present information about the immigration courts before and after LOP and contrast LOP participants with comparison groups in order to make statements about similarities and differences between LOP participants and other detained persons in removal proceedings.<sup>15</sup>

In addition to studying immigration court data on LOP participants and other detained persons in removal proceedings, we conducted a total of 53 qualitative interviews with LOP stakeholders, including immigration judges, court administrators, detention facility staff, and local ICE employees. These interviews focused on documenting stakeholder impressions of the LOP and any observations they had about the impact of the LOP. We also asked stakeholders for input on some of our preliminary findings; these interviews helped us identify “confounding factors” that might prevent us from seeing an actual impact of the LOP in an analysis of the variables specified above. Findings from these qualitative interviews are included throughout the report and often complement findings from our analysis of court records.

Finally, EOIR requested that Vera conduct interviews with detainees in order to assess the impact of the LOP from their perspective. In the second phase of the research, we conducted preliminary interviews with 33 detainees but determined that their experiences were too diverse to be able to make generalizable statements from short interviews with a small group of detainees. The logistics and resources (travel, permission from multiple detention facility operators, inability to conduct phone interviews or record interviews in detention settings) required to conduct intensive, longer interviews with large numbers of detainees deterred us from carrying out more formal interviews with detainees. Rather, we drew on these preliminary interviews, combined with data in our monthly reports and interviews with stakeholders to draft a set of site self-evaluation materials that could be administered on an ongoing basis to test what LOP participants are learning in orientations and workshops and to measure how program participants are applying this knowledge. These draft materials, once validated for reliability, will enable LOP providers to measure and report on the impact of the LOP on detainees on an ongoing basis, across sites and over time.

As explained above, program evaluations focus on documenting process, performance, and outcomes. In the next section we detail the process and performance of the LOP, describing how

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date of birth) or sex, but we were unable to do so because EOIR did not record this information in 2006. We hoped to create two additional categories of subgroups that we were not able to successfully construct because of incomplete EOIR data in one case (time in the United States) and, in the second case, due to the time that would have been required to create subgroups according to residency status (legally present versus unlawfully present). Because the immigration courts do not record information about residency status, we would have had to create proxy measures for residency status by analyzing the charges and types of relief from removal sought by each respondent, which is possible but beyond the scope of what we were able to deliver with limited funding in the second phase of work.

<sup>15</sup> For the purpose of clarity and to preserve the integrity of the research design, when we make comparisons between LOP participants and other detained persons who did not participate in the LOP, we are excluding any detainees at LOP sites who did not participate in the LOP (see Appendix II).

the program was intended to work and how it works in practice; services provided to LOP participants in 2006 and over the life of the program; and basic demographic information on program participants, such as nationality, language, and immigration charges.<sup>16</sup> In Section III, we describe observations of program impact and discuss ways in which the LOP is and is not meeting its primary objectives of (1) improving legal access for detained persons in removal proceedings by providing impartial, accurate orientations to the immigration court process and providing detainees with information to help them determine how to proceed in immigration court; and (2) improving efficiencies in the immigration detention and immigration court process for detained persons in removal proceedings. In Section IV we detail recommendations and next steps for additional research and for program improvements that might emerge from this evaluation.

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<sup>16</sup> Given the length and focus of this report, we do not include detailed information on demographics at each LOP site, but Vera is producing site-specific reports showing detailed information about LOP participants and services. Vera will use these reports to develop management plans in consultation with each LOP site's program manager.

## II. Legal Orientation Program Services

In this section of the report, we describe the basic program operation plan and how it is implemented across LOP sites, noting relevant variations that may exist in program implementation. We then discuss program oversight activities carried out by Vera, including analysis of program statistics. After describing how we collect and gather program service data, we discuss whom the program is serving, as well as some of the ways in which the program is and is not reaching the population it intends to serve. Finally, we provide recommendations for improving the program's reach.

### How the Legal Orientation Program Works

The Legal Orientation Program is a court-based legal education program for detained noncitizens in immigration court proceedings. The program provides a range of services, including group orientations, individual orientations, self-help workshops, dissemination of written legal educational materials, and, for a limited number of cases, pro bono recruitment.<sup>17</sup>

A significant feature of the LOP is that its services are limited to legal orientation (as opposed to legal representation). Program providers are not permitted to use LOP funds to engage in legal representation. (They may do so with funds from other sources.) Before providing any services, LOP presenters make this clear, explaining that their role is to provide participants with information on immigration law and procedure—not to represent them. In addition, LOP providers ask detainees who take part in individual orientations and self-help workshops to sign a statement indicating that they understand that LOP providers are not serving as legal counsel.

The LOP offers the same basic services at each site where it operates, but there is some variation in the methods used for delivering these services. As an immigration court-based program, the LOP's primary goal is to provide legal orientations to detained persons in removal proceedings. However, detained persons who do not have active immigration court cases are not prohibited from attending presentations, provided that their attendance is logistically feasible and does not prevent detainees in removal proceedings from receiving LOP services.<sup>18</sup>

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<sup>17</sup> Pro bono counsel may include attorneys, accredited representatives, and supervised law students affiliated with nonprofit organizations (including the same nonprofits who administer the LOP, using different funding sources).

<sup>18</sup> Participants without immigration court cases may be subject to stipulated orders of removal, expedited removal, or post-removal order review. A stipulated order of removal is a written agreement between a person and the government that agrees that the person will be removed from the United States. A stipulated order must be approved by an immigration judge, but a court proceeding is not required. The immigration judge has the option to inquire into the validity of the individual's waiver of the right to contest removal. In our research, we included cases involving stipulated orders of removal when analyzing certain patterns and trends (such as the distribution of nationalities across LOP sites), but we omitted observations about stipulated removals when reporting on representation rates and case processing times since the detained person generally does not appear in court on these cases. Where relevant, we indicate whether stipulated removal cases were included or omitted from the analysis being presented.

## Group Orientations

The group orientation is an essential component of the LOP; nearly everyone who participates in the program takes part in one. Group orientations are designed to give detained persons—regardless of whether they have access to legal representation—a general overview of immigration law, their legal rights, and the immigration removal process. These orientations explain the removal hearing process and provide general information about the statutory requirements for various defenses and forms of legal relief.<sup>19</sup> Additional topics include the notice to appear (the document that specifies the charges in a removal proceeding and directs the individual so charged to appear in immigration court); procedures for assessing eligibility for and, in suitable cases, applying for voluntary departure or release under bond; and the consequences of re-entering the United States after a removal order has been issued.

Group orientations are led by immigration attorneys or paralegals under the supervision of attorneys. Orientations generally last from 30 minutes to an hour but may run longer. (The length of a presentation depends on the size and needs of the group; in many cases, factors beyond the presenter’s control—such as how much time participants have before they are required to return to their dormitories for detention center “counts”—determine the length of the presentation.) Information is presented in a manner consistent with the principles of adult education in mind, taking into consideration differences in language, culture, and levels of formal education. Most providers use visual aids such as flip charts or PowerPoint presentations to make the material more accessible. (Examples of common visual materials include enlarged notice to appear forms, presentation outlines, and pictorial representations of procedural concepts.) Group orientations are conducted in the language or languages most suitable to a majority of those attending, typically Spanish or English. However, LOP providers are required to provide taped or written orientation materials to detainees who speak other common languages.

While the material covered in the group orientation is similar from one site to another, LOP providers customize the orientation to meet the needs of the detention center population and the session participants. For example, sites that see large numbers of individuals facing charges based upon their criminal convictions may cover certain forms of relief more in depth, while sites serving large numbers of individuals who recently arrived in the country and have not been

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Expedited removal is a process that allows an immigration inspector, rather than an immigration court, to remove from the United States certain classes of inadmissible non-citizens; the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandates that persons who arrive at a U.S. port of entry without travel documents or who present fraudulent documents must be detained and placed in expedited removal. Post-removal order review is a multi-step process that evaluates the likelihood of removal in circumstances where a person is detained for a lengthy period after a removal order becomes final and the possibility of release if removal is not likely in the foreseeable future. Delays in removal are often caused by the reluctance or refusal of the receiving country to issue the documents and permission necessary to effect a removal. See “Immigration Court Process in the US,” US Department of Justice, EOIR, April 28, 2005, <http://www.usdoj.gov/eoir/press/05/ImmigrationCourtProcess2005.htm>

<sup>19</sup> For examples of legal orientation program materials, see the “Know Your Rights” publication series of the Florence Immigrant and Refugee Rights Project. <<http://www.firrp.org/kyrindex.asp>>

charged with a crime may skip those topics. Similarly, the presentation style used for a group of 10 might vary considerably from that used for a group of 100.<sup>20</sup>

Different sites also see detainees at different stages of the immigration court process, depending on what has been negotiated with local ICE or detention center personnel.<sup>21</sup> At some sites, providers receive copies of the immigration court hearing calendar, or docket. These dockets are then redacted to generate a list of names of persons with upcoming initial hearings in the immigration court. The redacted lists are used by the detention facility to assemble detainees for group orientations. At sites that use this method, LOP presenters typically meet with the group orientation participants a day or two before their initial Master Calendar Hearings. At other sites, providers use a “new arrival” list, which allows them to provide the LOP to all detainees soon after they are admitted into the detention facility. At sites that use this method, providers may see detained persons who are subject to expedited removal, reinstatement of removal, or administrative removal proceedings.<sup>22</sup> They may also see detained persons who will request (or who have already signed) stipulated orders of removal and, thus, may choose to cover these processes in their presentations.

Coordinating group orientations—and, indeed, all LOP services—requires the cooperation and assistance of many stakeholders. Immigration court personnel must agree to share immigration court dockets, or facility staff must agree to share lists of “new arrivals” (persons who have recently been admitted to the detention center) so that the LOP providers can generate a list of potential participants. Working from this list, detention facility staff must then bring potential participants to the LOP. The facility must also provide security clearance and access for LOP staff, set aside space for the orientations, assemble detainees at the scheduled times, and escort detainees to and from LOP sessions. The success of the program depends on all of these logistical elements working together smoothly.

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<sup>20</sup> When designing our research, we considered any major differences that might affect outcomes, such as the size of the group in a presentation session. In addition, program managers are constantly evaluating the performance of LOP providers through site visits and other program oversight activities, as described in the next section of this report. However, while we do discuss differences in program outcomes based on different levels of intensity of participation in the LOP below, we have not had the resources to assess the effect of individual presenters or particular presentation styles on program outcomes, in part because the presentation’s focus changes from day to day depending on the participants in each session.

<sup>21</sup> Under the LOP contract, sites are required to “provide group orientations as soon as feasible to all detained aliens (with reasonable exceptions to be approved by the EOIR Contract Officer’s Technical Representative), regardless of representation status, who are or may be placed in immigration removal proceedings, prior to their initial Master Calendar Hearing in the Immigration Court.” For various strategic and logistical reasons, however, some sites have made the decision to see all new arrivals.

<sup>22</sup> “Reinstatement of removal” refers to cases where an ICE officer reinstates a prior order of removal against a noncitizen who has been previously removed (and who subsequently re-entered) the United States. “Administrative removal proceedings” may be brought by ICE against a person who is not a lawful permanent resident and who has an aggravated felony conviction. Administrative removal proceedings are determined by ICE rather than the immigration courts. (An aggravated felony is a crime that Congress has deemed serious, although some misdemeanors under state law are classified as aggravated felonies under immigration law. Persons with aggravated felony convictions have fewer remedies available to them than others in removal proceedings.)

While the LOP has by and large operated smoothly, running a program that involves two government agencies and numerous contract facilities—and that works inside a detention environment—can be logistically complicated and inevitably leads to challenges. At various times over the course of the program, LOP providers have encountered difficulties obtaining immigration court dockets or new arrival lists. There have been many instances of detention facility staff, particularly those unfamiliar with the program, failing to bring the detainees to the orientation location in a timely manner or, in some cases, failing to bring them at all. At some sites, providers have also experienced difficulty finding a suitable location for the group orientation. While some LOP providers present the group orientation in noisy recreation or multipurpose rooms, others are able to use empty immigration courtrooms or detention center libraries. For obvious reasons, background noise and other distractions can impede the participants’ ability to concentrate on the orientation. LOP providers have worked with detention facility staff and ICE to address these and other logistical issues.<sup>23</sup>

### **Individual Orientations**

Individual orientations are also integral to the LOP model and are conducted at each LOP site for detained persons without representation who have participated in a group orientation. Individual orientations aim to provide detailed and specialized information about particular forms of legal relief or components of the immigration court process. This is necessary because group orientations only provide a broad overview of the law and do not go into detail. In an individual orientation, the presenter may also respond to individual questions.<sup>24</sup>

In individual orientations, the amount of time that the presenter spends with each detainee varies according to the detainee’s needs, the number and complexity of the questions posed, and the number of detainees who want an individual orientation. In some sites, additional program staff are available to assist with individual orientations following the group presentation. In other sites, presenters or other staff members conduct individual orientations on the same day as the group presentation so as not to interfere with detention center censuses (or “counts”) or meals and in an effort to make individual presentations available to as many group orientation participants as possible. The amount of time spent on individual orientations is also affected by site-specific strategic decisions. For example, at the Eloy detention facility, the Florence Project gives a relatively concise group orientation, then devotes a significant amount of time to repeated in-depth individual orientations with a majority of the detainees. At Port Isabel, on the other

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<sup>23</sup> LOP providers report to Vera any changes in program implementation, such as changes in the location of the group orientations, challenges they encounter with new staff, or successes such as receiving permission to use a laptop computer to show a PowerPoint presentation. Vera tracks and reports to EOIR on all of these implementation changes and works with each LOP site to address any changes that create challenges to successful implementation of the program.

<sup>24</sup> Individual orientation presenters must always take care to distinguish between general legal information and legal advice. While they are encouraged to provide general information, providing legal advice would mean crossing the line into “legal representation,” which is prohibited when using LOP funds. (As noted above, though, some LOP providers receive funding from other sources—a circumstance which permits them to provide direct representation.)

hand, ProBAR conducts a lengthy and thorough group orientation followed by relatively short individual orientations with a smaller group of individuals.

The interplay between the group and individual orientations also depends on the size of the group in the group orientation. If the group is relatively small, the group presentation might resemble an individual orientation. Under such circumstances, detainees are more likely to feel comfortable talking about their situation in front of the group, and the presenter may decide to address individual questions in the group session.

### **Self-Help Workshops**

Self-help workshops—interactive, classroom-like sessions that provide detainees with the skills they need to represent themselves in immigration court (*pro se*)—are conducted on an intermittent basis in response to the needs of the detained population. Self-help workshops usually feature groups of three or more unrepresented detainees and cover such topics as the collection and presentation of evidence, general information about how to properly fill out applications, and other legal advocacy skills, as needed. Recent workshops have focused on a number of additional topics as well, including how to pursue specific forms of relief or defenses from removal (including voluntary departure); custody redetermination (bond) hearings; special procedures such as temporary protected status; reinstatement of a previous order of removal or deportation; “reasonable fear” or “credible fear” proceedings; and post-removal order review.<sup>25</sup>

To determine whether LOP participants would benefit from a self-help workshop, LOP providers usually keep track of the relief applications or defenses being pursued by each participant and consider whether there are any special needs related to those applications that might be served by a self-help workshop. For example, if there are five Spanish speakers who are interested in pursuing cancellation of removal, an LOP provider might coordinate a self-help workshop on that topic in Spanish.<sup>26</sup> Self-help workshops are only available to persons who have not retained counsel.

### **Dissemination of Written Legal Education Materials**

To supplement the assistance offered in group orientations, individual orientations, and self-help workshops, LOP providers distribute written materials to program participants. As required by the LOP contract, all written materials are approved by EOIR prior to distribution and are made available to all interested persons. All providers make available large *pro se* packets (modeled on

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<sup>25</sup> “Temporary protected status” allows nationals of a particular country to remain in the United States in cases where the Secretary of the Department of Homeland Security has determined that it is unsafe to return to that country. “Credible fear” and “reasonable fear” proceedings are interviews conducted by asylum officers to determine whether an individual meets the threshold for asserting a claim of asylum, withholding of removal, or withholding under the Convention Against Torture.

<sup>26</sup> Cancellation of removal is a form of discretionary relief available to lawful permanent residents and non-permanent residents. (Note that there are different eligibility requirements for each of these two groups.) When adjudicating cancellation proceedings, immigration judges use a list of statutory criteria to weigh the equities related to removing an individual from the country.

packets originally developed by the Florence Project) for detainees who are applying for relief without legal representation. Providers also distribute standard sample motions, briefs, and letters, as well as concise fact sheets that describe various forms of relief. Written materials are continuously updated based on the needs and preferred languages of the detained population. At some sites, LOP staff have also worked with detention facility administrators to update legal reference materials in facility libraries, which are mandated under the ICE detention standards.

### **Pro Bono Coordination**

To increase access to legal representation, LOP providers also provide pro bono coordination services. The degree to which providers engage in pro bono coordination varies from one site to another, but at all sites, the bulk of this work consists in reaching out to local attorneys or other representatives to cultivate an interest in pro bono work and to provide opportunities for training, sometimes for Continuing Legal Education (CLE) credit. At several sites, the remote location of the detention facilities and immigration courts, short immigration court deadlines, a shortage of mentors for legal representatives without experience in immigration law, and a lack of pro bono counsel have all presented significant obstacles to this work. While pro bono coordination is an important component of the LOP program, it is the least-funded of all LOP services: only a few providers have dedicated staff resources or designated budget line items for pro bono coordination.

## **Management and Oversight of the Legal Orientation Program**

Vera staff work in close collaboration with EOIR to manage the LOP and to coordinate the nationwide implementation of the program. Vera's management strategy is multi-pronged, drawing on the skills of program management, technical assistance, research, fiscal, and legal staff to ensure that the project meets its objectives in a timely manner; to respond quickly and effectively to unanticipated changes and problems; to disburse funds to subcontractors; and to conduct performance measurement and evaluation. To monitor the activities of subcontractors, Vera staff use a comprehensive approach that combines quantitative program data with feedback from and communication with LOP sites. Finally, Vera staff and LOP providers work together to document best practices, improve program performance, and ensure contract compliance. In what follows, we describe the key management activities performed by Vera staff on an ongoing basis.

### **Site Visits**

Vera managers and EOIR staff make annual visits to each LOP site to meet with LOP providers, observe presentations or workshops, and discuss program performance. During these site visits, Vera managers and EOIR staff also meet with stakeholders (such as local immigration court and ICE personnel) to obtain their input, and record detailed comments and observations about program performance and challenges to implementation. After the visit, Vera managers and



EOIR staff discuss their observations and subsequently provide feedback to LOP providers. In addition, Vera research staff—social scientists not directly involved in the day-to-day administration of the LOP—make periodic site visits to conduct confidential qualitative interviews with LOP staff and stakeholders, as required by EOIR.

### **Standardized Reporting of Program Data**

Soon after EOIR contracted with Vera, Institute staff built a customized database (LOPster) to ensure that program service data is recorded in a standardized manner by all LOP providers. Providers are required to record basic data in LOPster. Vera also created a LOPster user guide, which is constantly updated and includes rules for reporting on different types of services and participant data.

At the beginning of each month, subcontractors use LOPster to create data reports, which are then submitted to Vera. These data sheets allow Vera researchers to track the following statistics for each site:

- The number of group orientations provided;
- The alien identification numbers (A-numbers) of group orientation participants;
- The number of group orientation participants whose A-numbers were not recorded;<sup>27</sup>
- The average number of participants at group orientations;
- The range in the number of participants at group orientations (for example, group orientations might have ranged from 4 to 12 participants in a given month);
- The number of individual orientations provided;
- The number of individual orientation participants who are potentially eligible for relief from removal;<sup>28</sup>
- The frequency with which individuals were potentially eligible for each form of relief from removal;
- The sex of individual orientation participants;
- The nationality of individual orientation participants;
- The language of individual orientation participants;
- Any changes in location of group orientations;
- Any changes in topics presented at group orientations;
- Self-help workshop topics;
- Number of self-help workshop attendees;
- The language in which each workshop was conducted;
- Program challenges, progress, or changes;
- Staff changes and recruitment;

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<sup>27</sup> In some detention centers, detained persons are given a unique detention center identification number and are thus not required to carry their A-numbers with them. Other participants have not yet been received or have misplaced the charging document (notice to appear), which lists the A-number they have been assigned.

<sup>28</sup> For confidentiality reasons, this information is not linked to identifiers when reported to Vera.

- Pro bono recruitment and training efforts;
- Any departure from the program operation plan, together with the explanation for such changes;
- Stories of participants who obtained relief from removal, whether by representing themselves (pro se) or with the assistance of pro bono counsel;
- A-numbers of any participants who received pro bono referrals; and
- For cases where a detained person has legal representation, the type of representation (a retained attorney; the LOP provider, using funds from a source other than the LOP; another nonprofit; pro bono).

Vera researchers compile the information from these monthly data reports in a master database, highlight any changes they observe, and send the reports back to each LOP provider with any questions they may have. After addressing the researchers' questions, providers return the reports to Vera for review and submission to EOIR. This monthly process provides a constant feedback loop—sites track and monitor their own performance, Vera reviews monthly data reports and follows up as needed with LOP providers, and EOIR receives program statistics (including highlights of any new trends) and written explanations of any changes in services or participants. When relevant, Vera also submits notes from meetings, conference calls, and monthly site visits to EOIR, as well as information about any potential delays in the project timetable.

Vera program managers use the data from these monthly reports to monitor how well each LOP provider is meeting the obligations and objectives set forth in its contract. The data and program notes form the basis for regular discussions about each provider's performance. When the data indicate that a provider's performance is moving in an unfavorable direction, Vera managers work with the site director to determine the cause of the problem and develop strategies for addressing it. When the data indicate a positive performance, Vera managers work with providers to identify effective practices that might be replicated at other sites.

### **One-on-One Conference Calls**

Another way that the Vera monitors the LOP is through regular one-on-one conference calls with the project director for each site. These calls provide an opportunity to discuss contract compliance, program performance, new developments, site-specific concerns and concerns raised in monthly reports, data analysis, and site visits. They also give Vera managers a chance to help trouble-shoot any challenges that arise. (When problems or challenges arise, Vera staff communicate with site staff on a daily or weekly basis, as needed. On occasion, EOIR staff are brought into these conversations as well.)

### **Monthly Conference Calls**

Vera also coordinates monthly conference calls that involve personnel from all LOP providers and EOIR staff. These monthly conference calls provide an opportunity for providers to update

the entire group on any new developments, problem solve with regard to site-specific challenges, and share strategies for implementing the LOP and collaborating with local detention facility, ICE, or EOIR staff. Monthly conference calls also give Vera and EOIR a chance to update site staff on changes that affect the program as a whole.

### **Annual Peer-to-Peer Retreat**

Each year, Vera organizes a peer retreat for LOP providers. The peer retreat provides an opportunity for skill development, ongoing training, and collective problem solving. By coming together at one location, participants can share effective practices (such as techniques for improving orientation sessions and workshops), discuss challenges they face, hear feedback on the program from government stakeholders and former LOP participants, and manage the stress that often comes with work in detention settings.

In preparation for each annual retreat, Vera convenes a retreat planning committee composed of EOIR personnel and staff from several LOP sites. Through surveys of other LOP providers, the committee identifies key areas of interest and need. Vera staff then choose a retreat location in the vicinity of one of the LOP sites, which gives other providers an opportunity to visit and observe the site. The site visits proved so effective in promoting an exchange of ideas among providers that in 2006, Vera implemented a series of on-site training programs (see below).

### **On-Site Training Program**

The on-site training program, which was introduced in 2006, evolved from the annual site visits in LOP peer retreats. The on-site training program enables staff who are new to the LOP to receive guidance from more experienced providers in the intervals between annual retreats. On-site training programs are hosted by LOP providers and facilitated by Vera staff.

### **Materials Development**

Vera program managers work closely with EOIR and LOP providers to ensure that the written materials distributed by LOP providers are carefully developed and are reviewed and approved by EOIR. In 2006, Vera staff worked with LOP providers to translate existing documents into languages other than English and Spanish.

## **Who Does the Legal Orientation Program Serve?**

As the use of immigration detention—and bed space in many of the facilities that host the LOP—has expanded, the program has continued to serve more and more people each year. Between its creation in mid-2003 and the end of September 2007, the program had served more than 100,000 detained persons. However, as the expansion of detention has outpaced the expansion of funding for the Legal Orientation Program, the numbers of people receiving LOP

services represents a shrinking percentage of the overall detained immigration court population each year.

As discussed above, Vera managers monitor LOP providers on a monthly basis to improve program services. One way Vera does this is by studying the numbers and demographic profiles of participants who receive each type of program service at each LOP site. In this section, we discuss this process in detail, using data from calendar year 2006.

### **Group and Individual Orientation Participants**

Figure 2 shows program statistics from calendar year 2006. For each subcontractor (and corresponding immigration court), we tracked the total number of people who participated in each of the LOP services: group orientations, individual orientations, workshops, and pro bono referrals.<sup>29</sup> Columns 1 through 3 show, respectively, the total number of group orientations conducted; the total number of group orientation participants; and the average number of participants per group orientation. As the last row of column 2 illustrates, 25,852 people attended LOP group orientations in 2006.<sup>30</sup>

As columns 4 and 9 illustrate, the number and percentage of those who participated in both group and individual orientations varied widely from site to site. Seven percent of LOP participants attended individual orientations at Port Isabel, whereas 43 percent attended individual orientations at Denver. This is a result of differences in both population and program service models across sites: Ideally, participants self-select for the individual orientation based on the knowledge they receive in the group orientation. It appears that this did occur in Port Isabel, where, in 2006, a large number of detained persons who attended the LOP were not involved in immigration court proceedings and thus would not have needed individualized pro se assistance.

This is one example of how program statistics need to be combined with qualitative data and feedback from each site in order to determine how well the LOP is working: in other cases, low rates of participation in the individual orientation reflect the fact that few detainees at those locations have viable claims to relief and thus do not have a need individual orientations.

### **Workshop Participation**

Columns 6 and 7 (in Figure 2) illustrate the number of pro se workshops and the number of individuals who participated in those workshops in 2006. Fewer than 5 percent of LOP participants (981 out of 25,111) benefited from pro se workshops in 2006. Two conclusions can be drawn from this figure: the percentage of detained persons who need the sort of in-depth

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<sup>29</sup> The LOP expanded to six new sites in late 2006, but those sites were only required to report 2006 data for December of that year. Therefore, numbers do not yet illustrate the increase in numbers served that accompanied the expansion.

<sup>30</sup> The last row in column 8, “Total Unique Participants for All LOP Sessions,” shows that a total of 25,111 unique persons participated in the LOP in 2006. The reason for this disparity is that a small number of detainees attended more than one group orientation.

assistance offered by pro se workshops is relatively small, and LOP providers have a limited capacity to offer these workshops, probably due to a lack of funding.

### Pro Bono Referrals

In 2006, only a small percentage of LOP participants were referred to pro bono representatives by LOP providers. As column 5 shows, 257 pro bono referrals were made in total—approximately four referrals per site each month over the course of the year.<sup>31</sup> Although this may seem like a small number, one should consider the fact that very few detained persons (less than 20 percent in our analysis) pursue forms of relief other than voluntary departure.

Figure 2: Legal Orientation Program Services Provided, January 1 – December 31, 2006

		1	2	3	4	5	6	7	8	9
Site Name	Court Hearing Location	Number of Group Presentations	Total Group Presentation Participants	Average Number of Participants Per Group Presentation	Unique Individual Orientation Participants	Number of Pro Bono Referrals	Number of Workshops	Number of Workshop Participants	Total Unique Participants for All LOP Sessions	Percentage of Group Participants with Individual Orientations*
Denver	WSI	193	2,605	13	1,276	60	48	198	2,770	43%
El Paso	EPD	160	3,759	23	681	8	30	102	3,555	19%
Eloy	EAZ	252	3,877	15	2,735	54	16	114	3,593	74%
Mira Loma	LAN	144	3,744	26	941	11	62	142	3,452	23%
Port Isabel	PIS	239	8,577	36	637	49	24	118	8,340	7%
Seattle	AIR	411	2,598	6	1,038	64	152	272	2,724	29%
Batavia	BTV	15	142	9	109	5	2	9	144	75%
Houston	HOD	17	162	10	38	1	0	0	157	24%
Newark	NEW	10	79	8	16	3	0	0	81	7%
Laredo	LAR	6	84	14	13	0	0	0	74	12%
San Antonio	SAD	9	79	9	43	2	1	3	81	52%
San Pedro	SPD	6	90	15	58	0	6	23	84	65%
York	YOR	4	56	14	13	0	0	0	56	23%
<b>TOTAL</b>	N/A	<b>1,466</b>	<b>25,852</b>	<b>18</b>	<b>7,598</b>	<b>257</b>	<b>341</b>	<b>981</b>	<b>25,111</b>	<b>27%</b>

**Notes:** Sites above the bar reported data from January to December 2006. Sites below the bar reported data only in December of 2006.

\* The percentages are calculated based on the unique participants for regular individual orientations and the unique participants for group presentation.

### Is the LOP Reaching All Detained Persons in Immigration Court Proceedings?

EOIR requires LOP providers to make their services available to anyone who is 1) detained at the detention facility served by that provider, and 2) involved in removal proceedings at the immigration court associated with that detention facility. These services are to be provided regardless of whether an individual has legal representation.

<sup>31</sup> Because researchers did not collect the A-numbers (identification numbers) for referrals that were made during the first two months of 2006, there is a small degree of uncertainty in this figure.

To measure the LOP's success in reaching detained persons, we conducted two separate analyses of data submitted by LOP providers in Denver, Eloy, El Paso, Mira Loma, Port Isabel, and Seattle for calendar year 2006. In both analyses, we matched program data with different sets of immigration court records.

The first analysis examined how many participants had active immigration court cases (as opposed to closed cases or no case). This gives us a sense of how many LOP participants are involved in pending removal proceedings. The second analysis sought to determine how many individuals with active court cases received LOP services. This tells us how effective the LOP is at reaching people in removal proceedings at the sites it serves. We discuss both of these analyses in greater detail below.

### **LOP Participants with Active Court Cases**

We began by matching the A-numbers of LOP participants, as supplied by LOP providers in Denver, Eloy, El Paso, Mira Loma, Port Isabel, and Seattle with immigration court records. As Figure 3 illustrates, not all participants had active immigration court cases at the time they received LOP services. At four out of six LOP sites, more than 90 percent of participants had active immigration court cases. At the two remaining sites (Port Isabel and Mira Loma), the percentage of participants with active cases was much lower: 76 percent and 49 percent, respectively. In total, only 73 percent of those who took part in the LOP in 2006 had active cases.

In order to learn more about the 27 percent of LOP participants who did not have active immigration court cases, we examined the data for LOP participants who did not have active immigration court cases but whose A-numbers appeared in *old* court cases. As shown in Figure 3, nine percent of all LOP participants fit this description. Interviews with LOP providers suggest that many of these people were apprehended as a result of stepped-up ICE enforcement and detained under prior removal orders, though we cannot confirm this view without access to ICE data.<sup>32</sup> In addition, some of the participants with old cases may have been detained subject to post-removal order review.<sup>33</sup> Others may have been transferred to immigration detention from a state or federal prison after having their case concluded under the Institutional Hearing Program.<sup>34</sup> It is noteworthy that at Port Isabel, where only 49 percent of LOP participants had

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<sup>32</sup> Immigration court records do not track anything about the subsequent custody status of persons whose cases have already been concluded by either an immigration judge of the Board of Immigration Appeals.

<sup>33</sup> As noted above, post-removal order review is a multi-step process that evaluates the likelihood of removal in circumstances where a person is detained for a lengthy period after a removal order becomes final and the possibility of release if removal is not likely in the foreseeable future. Delays in removal are often caused by the reluctance or refusal of the receiving country to issue the documents and permission necessary to effect a removal. See "Immigration Court Process in the US," US Department of Justice, EOIR, April 28, 2005, <http://www.usdoj.gov/eoir/press/05/ImmigrationCourtProcess2005.htm>

<sup>34</sup> The Institutional Hearing Program identifies individuals serving criminal sentences and seeks to complete removal proceedings while the individual is serving the criminal sentence. If a removal order is issued, the individual will be removed from the United States promptly following release from prison.

active immigration court cases in 2006, 16 percent had prior immigration court cases—three to five times the figure at other sites.

As the last column in Figure 3 shows, 18 percent of all LOP participants had A-numbers that could not be matched with immigration court records. (As is evident from Figure 3, a significant portion of these individuals were detained at either Mira Loma or Port Isabel.) Interviews with LOP providers and other stakeholders suggest that many of these individuals were subject to expedited removal or other types of administrative detention that did not involve immigration court proceedings.<sup>35</sup> It is also likely that data entry errors at LOP sites contributed to the number of participants whose A-numbers could not be matched with immigration court records.

The significant difference between the numbers in column 3 for Port Isabel and Eloy or El Paso is noteworthy, given that all three sites are located near the Mexican border in regions that account for large numbers of apprehensions by federal immigration authorities. In large part, this discrepancy can be attributed to the fact that in 2006, LOP providers at Eloy and El Paso focused on detained persons with active immigration court cases (cases that appear on the docket lists available to LOP providers). In contrast, the providers at Port Isabel served all new arrivals to the detention center.

Serving detained persons who do not have active immigration court cases has pluses as well as minuses. Some providers believe that providing legal information to all detained individuals is the best way to make the system more efficient. Indeed, at some sites detention center personnel and ICE staff have requested that the LOP be offered more widely—to individuals subject to stipulated and expedited removal proceedings, for example. On the other hand, offering LOP services to all detained persons may distract from the program's primary function—namely, to serve people in removal proceedings who are in need of pro se assistance. Thus far, Vera and EOIR have worked with each LOP provider to determine which model works best at that provider's site. At some sites, providers have a limited scope of action, since logistical considerations at the local detention facility largely determine whether it is possible to serve everyone. For example, using the new arrivals list (which typically includes each detained person's dormitory assignment) to plan and arrange orientations—thus offering LOP services to everyone—may be the simplest course of action at a particular facility. At other facilities, it may make more sense to use names from the court docket, serving only those with active cases. The issue of whether or not to see new arrivals is one that Vera and EOIR continue to discuss with ICE personnel and detention facility staff on both a national and local basis.

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<sup>35</sup> As mentioned above, not everyone who is subject to removal from the United States is entitled to appear before an immigration judge. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandates that persons who arrive at a U.S. port of entry without travel documents or who present fraudulent documents must be detained and placed in expedited removal. The expedited removal process allows an immigration inspector to remove from the United States certain classes of noncitizens who are inadmissible. See "Immigration Court Process in the US," US Department of Justice, EOIR, April 28, 2005, <http://www.usdoj.gov/eoir/press/05/ImmigrationCourtProcess2005.htm>.

Figure 3: LOP Participants with Active, Old, and No Immigration Court Cases at the Time of LOP Services, January 1 – December 31, 2006

		1	2	3
Site Name	Court Hearing Location	Active Court Case (%)	Old Court Case (%)	Not Found in Court Records (%)
Denver	WSI	91	4	5
El Paso	EPD	91	3	5
Eloy	ELZ	90	5	5
Mira Loma	LAN	76	6	18
Seattle	AIR	92	5	3
Port Isabel	PIS	49	16	35
Total	N/A	73	9	18

### Active Court Cases That Included LOP Participation

While our first analysis examined LOP participants with cases in the immigration courts—active cases as well as cases that had been concluded—our second analysis looked at the percentage of individuals with active court cases at LOP sites who actually received LOP services in 2006. In this second analysis, we examined data for all individuals who had a case in one of the immigration courts associated with an LOP site and who were in detention at the time of the initial Master Calendar Hearing (in calendar year 2006). The results of this analysis tell us how well the LOP is succeeding in reaching all individuals in removal proceedings.

Figure 4, below, shows the results of this analysis. Column 1 lists the total number of initial Master Calendar Hearings for “detained cases” (cases that began while the respondent was in detention) at each of the six immigration courts served by an LOP provider in 2006. Column 2 lists the percentage of respondents from column 1 who participated in the LOP, by site. At Denver, for example, 80 percent of initial Master Calendar Hearings in 2006 involved persons who had participated in the LOP, compared with only 21 percent at Eloy. Overall, the LOP reached only 42 percent of detained persons whose initial hearings were held at immigration courts served by the LOP in 2006 despite the fact that the program served more people in 2006 than in any other year since the program began.

There are a number of possible explanations for the fact that some LOP sites serve large numbers of individuals (indicated in Figure 2, column 8) yet nonetheless have low rates of program participation (indicated in Figure 4, column 2). For one, individuals who do obtain legal counsel may conclude that it is not in their best interest to participate in the LOP. As column 3 (in Figure 4) shows, 58 percent of all detained respondents at LOP sites did not participate in the LOP. Also, as illustrated in column 3(2), 5 percent of all detained respondents at LOP sites did not participate in the LOP *and* had legal representation. In other words, 9 percent of the respondents who did not receive LOP *did* have legal representation. While this figure is not represented in Figure 4, it can be obtained by dividing the total percentage of persons with representation and no LOP (column 3[2]) by the total percentage of persons with no LOP (column 3). While immigration court records do not allow us to determine whether legal



representation was retained before or after LOP services were offered, it is possible that some of those who did not participate in the LOP chose not to do so because they were receiving legal advice from their counsel.

A second possible explanation for the low rates of LOP participation involves stipulated removal orders. As column 3(1) of Figure 4 indicates, 27 percent of the detained individuals who attended immigration court hearings at an LOP site but did not take part in the LOP had signed stipulated orders of removal. One should exercise caution in drawing conclusions about stipulated removals from this table, though, since it does not represent the total percentage of detainees at LOP sites with stipulated orders of removal.<sup>36</sup> Rather, it simply reveals that 27 percent of immigration court cases at LOP sites involved stipulated removal and no participation in the LOP. These 27 percent (of all court cases) in turn represent 47 percent of all persons with initial Master Calendar Hearings at LOP sites who did not participate in the LOP. It is not surprising that the LOP would fail to serve such individuals with stipulated removals: Because they do not require a court appearance, stipulated removal cases are typically settled within a few days and are thus unlikely to be listed on the immigration court dockets given to LOP providers. Also, people who have already signed stipulated removal orders have, *ipso facto*, indicated a desire to be repatriated and may not have any interest in taking part in the LOP.

Column 3(3) of Figure 4 indicates that 25 percent of all detained persons with initial Master Calendar Hearings at LOP sites did not participate in the LOP, had not signed stipulated orders of removal, and were not represented by legal counsel. We do not know for certain why these individuals did not take part in the LOP. However, there are several possible explanations. Several LOP providers told us that detention facility staff sometimes deny them access to the facility during facility lockdowns.<sup>37</sup> It also happens that detained individuals who are interested in taking part in the LOP are not given an opportunity to attend; that there are no announcements about upcoming programs; that announcements are inaudible; that staffing shortages prevent facilities from providing the necessary logistical support for orientations; and that interested individuals are overlooked due to poorly organized lists.

It also happens that detained individuals refuse to participate in the LOP. Again, there can be many reasons for this. An individual may already have representation, as discussed above, or he

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<sup>36</sup> Our analysis revealed that nearly 25 percent of all completed cases that began “detained” in 2006 were recorded as stipulated removal cases by the immigration courts. At four LOP sites, the number of stipulated removal cases was even greater percent: At Mira Loma, for example, 51 percent of all completed cases that started in detention were identified as stipulated removals, as were 48 percent at Eloy; 43 percent at Seattle; and 39 percent at Port Isabel. On the other hand, stipulated removals accounted for only 4 percent of all cases beginning in detention at El Paso and less than 1 percent of cases at Denver. These figures should not be interpreted to mean that one in four persons in immigration detention facilities signed stipulated orders of removal in 2006 because we are looking at a cohort of cases that involved initial Master Calendar Hearings in 2006 *and* a case completion by the time of our analysis in early 2007. Thus, 25 percent of the *completed cases* we studied involved stipulated removals. Calculating the percentage of all cases represented by stipulated removals would require following a cohort of cases until all cases in that cohort had been completed, which could take several years. When this report was being written (spring 2008), statistical reports produced by ICE and EOIR did not report on immigration court cases or removals in this way.

<sup>37</sup> When this occurs, LOP providers report to Vera the dates when they were unable to provide services.

or she may be misinformed about the nature of the services provided. (Some detained individuals have reported being told that they were being assembled for a religious program or a class.) Of course, some individuals simply may not be interested in participating. Providers also report that some detained persons are unable to understand the orientation because of mental illness, while others miss the LOP because they have been sent to “segregated housing” as a result of a behavior problem or health concerns. Finally, it is possible that some persons who are scheduled for hearings in the immigration courts in which the LOP operates may not actually be detained in those facilities. Instead, they may be transported to the immigration court for their hearings. This practice has become increasingly common in several facilities where the LOP currently operates.<sup>38</sup>

Figure 4: Participation in LOP Services at LOP Sites: Percentage of Detained Persons with Initial Master Calendar Hearings at LOP Sites Who Did and Did Not Participate in the LOP, January 1 – December 31, 2006

Site Name	Court Hearing Location	1 Total Number of Initial MCH at Each Site	2 Cases with Initial MCH and LOP	Cases with Initial MCH and No LOP			
				3	3(1)	3(2)	3(3)
				Total	Stipulated Removal	Represented	Others
Denver	WSI	2,903	80%	20%	1%	7%	13%
Eloy	ELZ	11,294	21%	79%	43%	3%	33%
El Paso	EPD	5,481	45%	55%	6%	14%	34%
Mira Loma	LAN	6,641	32%	68%	42%	3%	22%
Port Isabel	PIS	2,987	82%	18%	5%	5%	8%
Seattle	AIR	3,509	60%	40%	20%	3%	17%
<b>Total</b>	N/A	<b>32,815</b>	<b>42%</b>	<b>58%</b>	<b>27%</b>	<b>5%</b>	<b>25%</b>

After reviewing these statistics, Vera managers met with LOP providers, EOIR staff, and other program stakeholders to discuss how the LOP might boost participation rates among detained persons in removal proceedings, as well as how program services might be expanded to ensure that the program is accessible to all individuals in immigration detention with active immigration court cases. One question that was raised during these discussions was whether the LOP was reaching speakers of languages other than English and Spanish. In the next section, in an effort to shed more light on this question, we discuss what is known about the national and linguistic backgrounds of LOP participants.

### Nationalities and Languages of Cases at LOP Sites

Our analysis of the rates at which different national groups accessed LOP services found that Mexicans accounted for the greatest numbers of participants, although non-Mexicans had higher rates of participation at some LOP sites. In 2006, 59 percent of all individuals whose immigration court cases began while they were in immigration detention and 73 percent of all

<sup>38</sup> In future analysis, it may be possible to identify which detainees are housed elsewhere by reviewing the person’s address recorded by the immigration courts. Vera did not analyze this information in the research reported on here.

detained at LOP sites were Mexican.<sup>39</sup> Both nationwide and at LOP sites, El Salvador, Guatemala, and Honduras accounted for most of the non-Mexicans (often referred to as “Other Than Mexicans” [OTMs] in reports on immigration enforcement efforts). Citizens of the Dominican Republic, China, Cuba, Haiti, and Jamaica each accounted for slightly more than 1 percent of detained persons nationally and less than 1 percent at LOP sites. Caribbean nationals, who account for large numbers of detained persons in some parts of the country, were less prevalent at LOP sites in 2006.<sup>40</sup>

As noted earlier in this report, when EOIR began the program in 2003, program managers deliberately selected detention locations with predominantly bilingual, English- and Spanish-speaking populations. As the program expanded beyond the original sites and into detention centers with larger numbers of speakers of languages other than English and Spanish, the program managers tried to increase their ability to serve all detained persons, regardless of their language spoken. In 2006, LOP served speakers of more than 60 languages. However, at the six sites that were fully operational in 2006 (Denver, Eloy, El Paso, Mira Loma, Port Isabel, and Seattle), Spanish speakers continued to account for the overwhelming majority of participants.

Similarly, according to immigration court records that track the language used by each respondent in the courtroom, Spanish continued to be the predominant language spoken by respondents with initial Master Calendar Hearings in 2006.<sup>41</sup> Nationally, 79 percent of detained persons with initial Master Calendar Hearings in 2006 were listed by the immigration courts as Spanish speakers versus 86 percent of cases at LOP sites. In comparison, English speakers accounted for 14 percent of all detained persons with initial Master Calendar Hearings in 2006 versus 11 percent at LOP sites.

Additional languages were also represented nationally and at LOP sites, although in far smaller numbers. Mandarin speakers accounted for 1 percent of “detained” immigration cases nationally versus 0.4 percent of cases starting at LOP sites. All other languages occurred in less than 1 percent of all initial Master Calendar Hearings nationally and at LOP sites. Creole,

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<sup>39</sup> These figures will not match statistics provided by EOIR or ICE on all immigration court cases or all persons in immigration detention or removed from the United States. We are presenting statistics only on persons who had initial Master Calendar Hearings in 2006 whose cases began “detained.” In other words, we are including persons who were detained throughout their immigration court cases and persons who were detained but later released; we are not including persons who immigration court records list as “never detained.” Moreover, we are not reporting on all “detained” immigration court cases in 2006, but, rather, only those cases that began (had an initial Master Calendar Hearing) in 2006.

<sup>40</sup> Apprehension and detention patterns shift rapidly, and these statistics from 2006 may not accurately depict current population demographics. Since 2006, the distribution of nationalities at LOP sites has reflected shifting trends in detention practices.

<sup>41</sup> Immigration court clerks use the “language” field of their administrative database to track the language of interpreter needed at each hearing (or will list English if no interpreter is needed). This means that in most instances the language in immigration court records will reflect the language that the respondent requested at the last or latest hearing. However, in some immigration courts, the language field is used to track the language of interpreter needed for a witness, which may be different from the language spoken by the respondent. There is no way of knowing when looking at data which languages may be for witnesses instead of respondents, though we were assured by immigration court administrators that this occurs infrequently.

Portuguese, Arabic, Korean, Russian, Vietnamese, and French were listed relatively more frequently than other languages occurring in less than 1 percent of initial Master Calendar Hearings, nationally and at LOP sites. Despite the relative infrequency with which these other languages were used in immigration court hearings, LOP providers have nonetheless worked in close collaboration with Vera program staff to translate LOP materials into languages other than English and Spanish. Vera program managers continue to prioritize expansion of program services and creation of program materials to serve as diverse a range of linguistic groups as feasible.

Because the detained population served by the LOP is continually shifting, largely due to ICE enforcement and placement decisions (and to a lesser extent fluctuations in migrant populations), LOP providers cannot always predict the demographics of people in detention from one week to the next. Experience has shown us that a large enforcement action by ICE can lead to a sudden influx at detention centers of language groups that the LOP has rarely served before. Similarly, at sites where the group orientation is offered to new arrivals (many of whom may be subject to expedited removal), there may be times when large numbers of LOP group orientation participants do not have cases pending in the immigration court. This as well might fluctuate considerably week-by-week or month-to-month.

## Nationwide Trends for Cases Beginning in Detention

As the discussion above illustrates, in addition to assessing whether the LOP is meeting its objectives, we also analyzed the relationship between the LOP and larger trends and patterns in immigration detention and the immigration courts. This enabled us to better understand the broader context in which the LOP is being implemented.

A recent report from the Government Accountability Office notes that over the past few years EOIR has experienced a 44 percent increase in the number of new cases brought by ICE against noncitizens, in part a result of enhanced border and interior enforcement activities.<sup>42</sup> Analysis of ICE data conducted by other researchers shows a 22-percent increase in apprehensions between 2002 and 2005.<sup>43</sup> Additionally, ICE reported an increase in immigration detention beds of 6,300 in fiscal year 2006, bringing the total number to 27,500 nationwide by 2007. In addition to increases in apprehensions and detention beds, ICE reported housing 237,667 immigration detainees in 2005—an increase of more than 28,000 people since 2001. Immigration enforcement officials project that these numbers will continue to rise.<sup>44</sup>

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<sup>42</sup> Government Accountability Office. Executive Office for Immigration Review: Caseload Performance Reporting Needs Improvement, August 2006.

<sup>43</sup> Batalova, J., and D. Konet (March 2007), Spotlight on Immigration Enforcement in the United States. Migration Information Source. Accessed June 11, 2007  
<http://www.migrationinformation.org/USFocus/fisplay.cfm?ID=590#top>

<sup>44</sup> Detainees under Bureau of Immigration and Customs Enforcement (ICE) Jurisdiction. Sourcebook of Criminal Justice Statistics Online. Accessed June 13, 2007 from <http://www.albany.edu/sourcebook/pdf/t6612005.pdf>

## **Immigration Charges Among Detained Persons in Removal Proceedings**

EOIR databases do not track immigration or residency status. However, from the charges listed on the notice to appear, which are recorded in immigration court databases, we can discern which removal cases were filed by ICE based on non-criminal immigration status violations, and which were brought based on past criminal convictions. Understanding the types of immigration charges facing LOP participants—and detainees nationally—can help us assess if LOP providers are focusing their orientation presentations on topics affecting the greatest percentages of participants and can further contextualize program service numbers.

The overwhelming majority of all new detained removal proceedings in the immigration courts in 2006 were for immigration status violations not linked to prior criminal convictions. In other words, most detainees with new immigration court cases were accused of immigration violations that did not render them “criminal aliens” or “aggravated felons.” Detained persons charged with immigration status violations were predominantly accused of unlawful entry or presence without admission or parole under INA §212(a)(6)(A)(i). In 2006, LOP participants were more likely to be charged pursuant to this provision than other detainees in removal proceedings nationwide (61 percent of all LOP cases versus 45 percent of all comparison group cases). This is not surprising given that a few of the original LOP sites in this evaluation operate in large facilities near the southern U.S. border. This was particularly true of the programs in Port Isabel and El Paso in 2006, although demographics here have since shifted and more persons with criminal convictions are being transferred to these facilities from elsewhere in the U.S.

Detained LOP participants and comparison groups alike were charged as “aggravated felons” in fewer than 10 percent of the immigration court cases we analyzed. Most of the detained persons in new removal proceedings in 2006 were accused of non-criminally related immigration violations. However, the charge for aggravated felony convictions, INA §237(a)(2)(A)(iii), was the second most frequent charge for both LOP and comparison groups (7 percent for LOP participants versus 9 percent of persons in comparison groups).

## **Applications for Relief from Removal**

LOP providers can enhance the effectiveness of their orientations by understanding trends and patterns in the immigration charges that their participants face. However, an understanding of any potential impact of the LOP on rates of applications for relief from removal must consider these rates in relation to both representation rates and the specific charges. For example, were we to see 99 out of 100 detainees charged with an offense that makes them ineligible for a particular form of relief, we would not expect to see these individuals pursuing such relief if they were appropriately oriented to eligibility requirements. This section of this report discusses the trends and patterns we observed over time, nationally and at LOP sites, in order to contextualize our evaluation of LOP’s impact.

LOP providers report to Vera only on possible forms of relief or defense that individual orientation participants report they might pursue. Vera does not typically do much analysis of this

data since it only tells us the forms of relief persons attending individual orientations *might* pursue. Nevertheless, one noteworthy trend was observed by Vera program managers. In 2006, the LOP sites reported seeing 129 persons at individual orientation sessions who were planning to pursue claims to U.S. citizenship. Because LOP providers do not discuss the details of individual cases with orientation session attendees, we do not know if those claims to citizenship are derivative, acquired, or by birthright. Nor do we know the outcomes of these claims. We are simply able to report that 129 persons who attended LOP orientations in 2006 said that they *planned* to pursue claims to citizenship.<sup>45</sup>

Figure 5, below, shows rates of application for relief among persons whose immigration removal cases began while detained, from 2000 to 2005. The trend lines show that since 2000, there has been a decline in the percentage of detained persons in removal proceedings pursuing relief at both LOP and non-LOP sites.<sup>46</sup> This trend is likely related to shifts in the detained population and the types of relief those detained persons are statutorily eligible to receive. However, the decline in relief application rates for cases that began at LOP sites has been sharper than that of cases that began at comparison sites. At other immigration courts around the country with comparable case volumes, relief application rates followed a different pattern, increasing slightly around the time the LOP began. While these patterns do not identify or isolate what role, if any, the LOP might have played in affecting these rates, they do show that immigration courts with the LOP followed a *different* pattern than other immigration courts with a comparable volume of cases. It is possible that the LOP was responsible for some of what we observed. However, the comparative designs we are using make it just as plausible to argue that these differences are the product of the very factors that led to the placement of the LOP in certain locations in the first place—the concentration of certain types of detainees at certain detention centers (such as recent entrants into the U.S. housed in the detention facilities in the southern border region) or the low rates of legal representation at LOP sites. Further research should be conducted to determine which of the rival interpretations is correct.

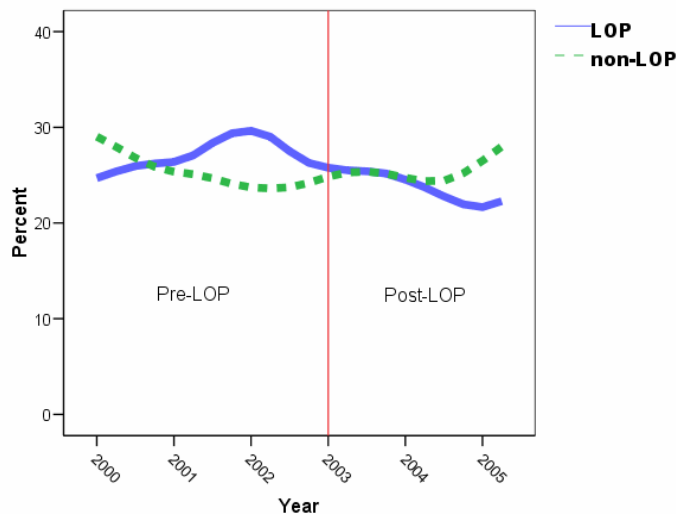
We observed no remarkable differences in the distribution of relief application types between LOP and comparison groups, with the exception that immigration courts with the LOP received a smaller percentage of asylum applications than courts with a comparable volume of cases. Again, this is not surprising given that one of EOIR's priorities for the programs at Denver, El Paso, Eloy, Mira Loma, Port Isabel, and Seattle was that they be placed in sites with low representation rates and serve a predominantly bilingual (English/Spanish) population. Locations with large volumes of asylum cases tend to have a more linguistically diverse population of detainees and higher rates of representation.

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<sup>45</sup> The number of claims to citizenship identified by the LOP providers increased to 322 in 2007. A table showing the monthly breakdown of such claims by LOP site can be found in Appendix I.

<sup>46</sup> These lines show rates of relief application; in other words, we are not showing the total numbers of persons who pursued relief in the immigration courts, but the percentage of the total number of persons with active immigration court cases whose cases involved relief applications. This means if the number of court cases changed from year to year, but the same percentage of cases involved relief applications each year, we would see a straight line.

Figure 5: Percentage of Relief Applications for Detained Cases at LOP and Comparison Hearing Locations from 2000 to 2005.



As Figure 5 illustrates, overall rates of application for relief fluctuated between 20 percent and 30 percent at LOP sites and other immigration court hearing locations from 2000 to 2005. In other words, 70 to 80 percent of all cases initiated during this time involved no relief applications. This point underscores a key component of the group orientation. LOP providers use the group orientation to provide information to participants that enables them to make informed decisions about their potential eligibility for relief (or defenses such as immigration benefits, which are not heard in the immigration courts and not tracked in immigration court records). Because such a high percentage of cases involves no relief from removal, LOP providers spend a substantial amount of time in the group orientation discussing topics of relevance to persons with no relief possibilities, such as ways to accelerate repatriation through the removal process and consequences of unlawful reentry following removal.

Of note is the fact that while the total percentage of detained persons with immigration court cases involving relief applications has decreased over time at LOP sites, the *distribution* of the types of relief being pursued has not changed significantly. Though we do not show this information here, we observed that from 2000 to 2005, at LOP sites, only about 10 percent of all relief applications involved relief other than voluntary departure, both before and after the LOP. Similarly, I-589 applications consistently comprised less than 5 percent of all relief applications at LOP sites, before and after the LOP started. In other words, while a shrinking percentage of detained persons with immigration court cases pursued relief, the distribution of relief applications among those pursuing relief remained the same.<sup>47</sup> These patterns held true in 2006.

<sup>47</sup> Throughout this report we report on I-589 applications instead of naming these applications as “asylum.” When an I-589 application is filed, court clerks cannot always tell if the applicant is seeking asylum, withholding, Convention Against Torture (CAT), or some combination of these forms of relief. To avoid mislabeling, we are reporting on the entire application as opposed to claims relating only to asylum, withholding, or CAT. Readers should not infer that I-589 means asylum was pursued. At some LOP sites, providers report seeing participants who qualify for withholding or CAT but do not meet statutory requirements for asylum, often because of criminal convictions or other statutory bars.

Figure 6, below, represents the rates of relief applications for all completed immigration court cases that had an initial Master Calendar Hearing between January 1 and August 31, 2006. This figure shows that LOP participants followed patterns of application for relief that were consistent with rates in other immigration courts around the country. While a slightly higher percentage of LOP participants' cases involved no relief applications (69 percent versus 65 percent for comparison cases), LOP participants pursued I-589 applications at slightly lower rates (4 percent versus 7 percent for comparison groups). Rates of application for voluntary departure were 21 percent among LOP participants and 22 percent among comparison cases, while all other applications for relief had a combined average rate of 6 percent among LOP participants and 5 percent at comparison group sites.<sup>48</sup>

Figure 6: Relief Application Rates for Completed Cases that Began in Detention, January 1 – August 31, 2006

Relief Application Type	LOP (N=7,528)		Comparison (N=30,728)	
	N	%	N	%
No Application	5,184	69%	19,978	65%
Voluntary Departure Only	1,563	21%	6,904	22%
I-589	318	4%	2,215	7%
Other Application Combinations	463	6%	1,631	5%

### Nationwide Case Outcomes—Rates of Grants of Relief and Orders of Removal

When persons in removal proceedings do not file applications for relief from removal and have not pursued any other defenses, they will almost never be granted permission to remain in the United States. Not surprisingly, then, given the low rates of applications filed for relief from removal shown in Figure 6, very few of the cases we analyzed resulted in grants of relief or other decisions that resulted in permission to remain in the U.S. lawfully. In our analysis of 91,747 completed cases nationwide that began in detention in 2006, we observed that 87 percent of

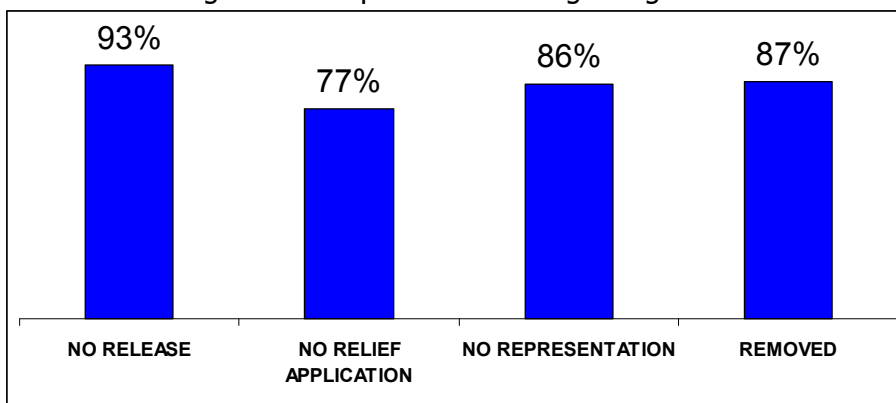
<sup>48</sup> Though we intended to analyze each type of relief application separately, rates of relief application for most forms of relief were so low that we did not have enough cases to study. For example, of 44,054 concluded cases we studied (cases that began in detention between January 1 and August 31, 2006), only 3.6 percent of all cases included applications for 240A cancellation of removal for lawful permanent residents, 0.9 percent included applications for 240B cancellation of removal for non-residents, 0.9 percent included 245(i) applications, 0.5 percent included 212(c) applications, and all other application types not listed here (excluding asylum and voluntary departure) occurred in less than 0.5 percent of all cases. As a result, in the analysis, we grouped cases into the four categories shown in Figure 6: no relief application, voluntary departure only, I-589, and the category “other application,” which combines all other forms of relief such as 240A and 240B and any combinations in which multiple applications occurred. Where possible, we analyzed cases including these forms of relief separately, but given the relatively few cases in which they occurred, it was often impossible to do so. As noted earlier, when reporting on rates of relief application, we include voluntary departure since it is considered a form of relief by the immigration courts despite the fact that it does not result in permission to remain in the United States. Many immigration practitioners do not consider voluntary departure a form of relief. In some discussions we separately identify voluntary departure to show the low rates of relief granted when voluntary departure is analyzed separately. In those instances, we indicate that voluntary departure has been separated from the overall category of relief.



completed cases resulted in orders of removal (Figure 7, fourth bar).<sup>49</sup> The 13 percent of cases that began in detention and did not result in removal in 2006 fell into the following groups: 3 percent resulted in grants of relief, immigration judges terminated 2 percent, 1 percent resulted in administrative closure, and most of the remaining 7 percent were granted voluntary departure.

Figure 7 below shows nationwide outcomes (as percentages) for completed cases that began in detention in 2006. The first bar shows that the overwhelming majority of persons whose immigration removal proceedings begin while they are detained are not released from detention (93 percent) and remain detained at the time the immigration judge issues a decision in the case. Of all completed cases, 77 percent involved no application for relief (second bar). Inversely, 23 percent, less than 1 in 4, involved applications for relief from removal, including voluntary departure. The third bar shows that 86 percent of these completed cases involved no legal representation at any point in the case, prior to the appeals process, which is not reported on here. Finally, as discussed above, low rates of release, low rates of relief application, and low rates of representation combine to contribute to an overall national rate of removal of 87 percent in the 2006 completed case group. As discussed above, the inverse of this 87 percent includes 3 percent that resulted in grants of relief and 2 percent that resulted in termination by immigration judges.<sup>50</sup> The inverse group also included 7 percent that involved grants of voluntary departure and 1 percent that resulted in administrative closure.<sup>51</sup>

Figure 7: National Averages for Completed Cases Beginning in Detention in 2006



Note: Total number of cases is 91,747.

When interpreting findings about the impact of the LOP in the section that follows, it is important to remember that the LOP is operating in the context of these outcomes nationwide and that LOP services are structured according to the reality that the overwhelming majority of

<sup>49</sup> This includes stipulated removals. In 2006, 22 percent of all cases that began in detention were coded by the immigration courts as receiving orders of stipulated removals.

<sup>50</sup> Termination occurs when the immigration judge determines that the government cannot sufficiently prove its case that a person should be removed from the country.

<sup>51</sup> Administrative closure takes a case off an immigration judge's calendar but does not result in a decision on the case.

detained persons in removal proceedings do not pursue defenses or relief from removal in the immigration courts, do not retain legal counsel, and do not receive grants of relief. It is in this national context that the LOP strives to improve efficiencies by educating those small numbers of detainees with viable defenses or claims to relief that they are eligible to pursue these defenses or claims and helping them understand how to do so. Though our findings on the impact of the LOP focus on subgroups of persons released from detention, retaining legal counsel, or pursuing or granted relief, readers should keep in mind that these subgroups represent a very small percentage of detained persons in removal proceedings in the immigration courts. Since not all detained persons are in immigration court proceedings and we are only reporting on persons with immigration court cases who were detained at the time their immigration court cases began in 2006, the percentage of all detained persons nationwide who are removed from the United States is actually greater than 97 percent.<sup>52</sup> Given that most detained persons in removal proceedings will not be granted relief from removal that allows them to remain lawfully in the United States, the LOP group orientation devotes substantial time to providing information that enables detained persons to make informed and timely decisions about ways to accelerate repatriation and that educates them about the penalties attached to re-entering the United States unlawfully. Though modest when expressed as a percentage, the actual number of people with a valid defense or claim to relief is substantial, and their legal claims significant.

The next section reports on our observations on the impact of the LOP up to this point. In Section IV, we discuss recommendations and next steps based on our discussion of the process and performance of LOP as well as the impact/outcomes of the LOP presented in this report.

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<sup>52</sup> ICE does not report publicly on the total numbers of immigration detainees in removal proceedings versus in detention for other reasons. As a result, we are unable to calculate the exact percentage of detained persons who were eventually removed/deported. Just as rates of removal orders for detained persons with immigration court cases should not stand in for rates of removal orders for all detained persons nationwide, similarly, we cannot assume that removal *orders* resulted in *actual* removals. ICE does report on the total numbers of removals each year, and while most detained persons with a final order of removal are removed, a small percentage are not. Finally, we did not analyze rates of removal orders for persons in removal proceedings who were never detained.

### III. Measuring the Impact of the Legal Orientation Program

As noted at the beginning of this report, the primary objectives of the LOP are twofold: to improve legal access for detained persons in removal proceedings by providing impartial, accurate orientations to the immigration court process and providing detainees with information to help them determine how to proceed in immigration court; and to improve efficiencies in the immigration detention and immigration court process for detained persons in removal proceedings. Efficiencies may be defined as the best possible allocation of resources (maximum benefits for minimum costs) or as enhancements of systems and processes that enable them to work more smoothly.

In addition to studying the LOP's progress in meeting the program's objectives, Vera researchers considered the extent to which the LOP might also assist EOIR in meeting some of the agency's priorities as outlined in its 2005-2010 Strategic Plan. In particular, we focused on three agency-wide objectives described in the EOIR Strategic Plan that intersect with the objectives of the LOP. First, objective 1.1 of that plan states that EOIR "must eliminate case backlogs by the end of fiscal year 2008" and "must render 'expeditious decisions' and continue to reduce 'frivolous' applications." Objective 1.2 of the plan commits the agency to "implement improved caseload management practices," which includes "studying failure to appear rates."<sup>53</sup> Finally, the plan notes that, "a longstanding area of concern is the large number of unrepresented aliens in immigration proceedings." In response, EOIR's plan commits the agency to "encourage pro bono representation," noting that, "effective representation can add value to the adjudicative process."<sup>54</sup> In the discussion that follows, we detail ways in which the LOP is meeting its stated objectives and may be an efficient and cost-effective method of helping EOIR meet some of its agency-wide objectives.

In order to gauge the impact of the Legal Orientation Program, Vera researchers analyzed program and immigration court data, talked to program stakeholders, and reviewed literature from other studies of the immigration courts and pro se education programs, specifically those focused on legal rights information or carried out in prison or detention settings. As detailed at the beginning of this report, EOIR requested that Vera analyze any potential impact of the LOP on legal representation, case outcomes, case processing time, relief application rates, in absentia rates, and stakeholder and detainee satisfaction with the program. This report presents key findings from the research to date.

In Section II of the report, we presented observations from analyses of program service data to determine if the program is functioning as intended and who the program is serving. We also presented an analysis of administrative data from the immigration courts identifying trends and patterns nationwide at immigration courts in the years immediately before and after the LOP

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<sup>53</sup> U.S. Department of Justice, Executive Office for Immigration Review, Fiscal Years 2005-2010 Strategic Plan, September 2004.

<sup>54</sup> *Ibid.*

began. In this section of the report, we continue to discuss observations of trends and patterns before and after the LOP began. We also present observations from analyses in which we matched program service and immigration court administrative data in order to observe

- LOP participants' cases in the immigration courts and to study differences or similarities between LOP participants and other detained persons with active immigration court cases;
- any differences among LOP participants based on level of LOP participation (group orientation, individual orientation, workshop); and
- potential relationships between the LOP and other variables that may have an impact on immigration court cases.

We supplement these observations with findings from qualitative interviews with LOP and immigration court stakeholders.

## Analyzing Trends in Immigration Court Data

As described previously, Vera built a program service database (LOPster) that allows LOP providers to track and report to Vera researchers data on all persons who participate in LOP services. As the LOP contractor, Vera is provided with confidential access to immigration court records for the purposes of tracking LOP participants' immigration court outcomes. As a result, Vera researchers are uniquely able to track which cases in the immigration courts correspond to LOP participants. Because of the way we collect data, we are also able to identify the levels of intensity of LOP services received by various participants (group orientation, individual orientation, self help workshop, pro bono referral). Vera reports to EOIR monthly program statistics, in aggregate and stripped of any individually identifying information. When monthly data are received by Vera, researchers organize and store these data in a relational database that allows us to easily merge these data files with those received from the immigration courts (see Appendix II).

When determining which cases to include in our analysis of the LOP's impact, we first conducted a series of analyses that studied changes in the immigration courts in the years immediately before and after the implementation of the LOP, from 2000 to 2005. These analyses did not merge LOP data with EOIR data. Rather, we studied only immigration court data in order to observe trends and patterns nationwide at the Batavia, Denver, Eloy, El Paso, Mira Loma, Port Isabel, and Seattle immigration courts and at 33 other immigration courts with comparable numbers of cases.<sup>55</sup> In this analysis, we plotted immigration court data in the years immediately

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<sup>55</sup> In this analysis, we omitted immigration court hearing locations with small caseloads, primarily because case time and variables such as rates of application and representation could not adequately be compared to hearing locations that see as many as several thousand cases per year. We also omitted all hearing locations that are used only for juvenile cases, as well as hearing locations used exclusively for televideo hearings or the Institutional Hearing Program. As a result, we were left with 33 hearing locations in addition to the six LOP sites. Finally, in some of our

before and after the start of the LOP to see if we could identify any “big-picture” trends that might point to differences in representation rates, types of relief sought, case outcomes, and case processing times for persons whose cases began at LOP sites. This historical and comparative analysis allowed us to examine rates (comparative magnitudes—i.e., one line on a graph is higher than another) and trends (comparative directions—i.e., one line on a graph is moving up and the other is moving down).

At the time we began the pre- and post-LOP analysis of immigration court data, Vera was only beginning to collect and organize LOP participants’ Alien identification numbers (A-numbers), unique identifiers that allow us to track individual cases across multiple datasets. Since we were not yet able to match LOP participants’ A-numbers with court data and, thus, identify which immigration court cases corresponded to LOP participants, we did not study data at an individual level. As a result, the before and after analysis does not allow us to make conclusive statements about the impact of the LOP. Even without being able to make definitive statements about the LOP, the historical analysis helped us narrow our focus and provided a comparative, national context in which to situate further analysis. This also helped us develop questions for LOP stakeholders about differences in immigration court procedures and their explanations for the patterns and trends we observed. The historical analysis was only a first (but important) step that, combined with stakeholder interviews and input from experts in the field, helped us refine the focus when conducting analysis of individual case outcomes.

## Tracking LOP Participants in the Courts

After analyzing macro-level immigration court trends, we matched program data collected by LOP providers with immigration court data. This enabled us to track case outcomes and make more conclusive statements about how LOP participants fared in the immigration court process in comparison with detained individuals who did not receive LOP services. Because some of the six new LOP sites began offering services in September 2006, we were concerned that including those sites as LOP sites might leave too few non-LOP cases for meaningful analysis. Our further analysis of the cases showed that more than 85 percent of the cases with an initial Master Calendar Hearing in the first eight months of 2006 had been completed at the time of our initial examination of the data and that the number of cases in this sample was sufficiently great for meaningful analysis. We thus determined that we would focus our comparisons on the eight-month period of time from January 1 to August 31, 2006.

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analysis of LOP sites we included Batavia. Batavia began operations in mid-2003 like some of the other original sites, but ceased operations for one year from 2005-2006. Because Batavia was operating in 2005, which was the end date for our analysis, we included it in the pre- and post-LOP study. Immigration court hearing locations included in the pre- and post- LOP analysis included courts identified with the following hearing location codes: FLO, ELXC, CCA, SDE, TUC, KRO, HOD, SPD, YOR, BDC, SAD, LVG, KAN, ATD, SFD, DAD, NEW, OMA, SAJ, BLM, WAS, CHD, NOO, HAS, ELZ, BOS, PDT, NYD, JAM, MEM, HAR, ELP.

## Comparisons Between LOP Participants and Other Detained Persons

When comparing LOP participants to other groups of detained persons with immigration court cases, we created various subgroups according to characteristics that our analysis showed might impact an immigration court case, including the following information tracked in immigration court records:

- *Type of relief* from removal sought in the immigration courts;
- *Custody status* (detained or released);
- *Legal representation status* (represented at some point in the immigration court case versus never represented);
- *Charges brought by ICE* on the notice to appear (criminal versus non-criminal violations);
- *Nationality and/or language* used in immigration court by the detained person;
- *Immigration judge and/or immigration court* (used for internal purposes to check for administrative and procedural variation that might distort findings); and
- *Level of LOP service* (no participation in the LOP versus participation in the LOP; intensity of LOP service).

For each analysis, we divided subgroups by at least representation, custody status, and type of relief from removal sought in the immigration courts. This enabled us to avoid comparisons between persons pursuing radically different forms of relief, such as voluntary departure and asylum/withholding/CAT; it also ensured we did not conflate represented cases with those that were heard *pro se*. We did not, however, group by nationality, language, or immigration charge for every analysis we ran at this stage.

## Qualitative Interviews

In order to contextualize quantitative observations, we integrated qualitative research into our evaluation. Using multiple methods of analysis or “triangulation” of methods ensures that even when researchers cannot observe any measurable program impact in one form of analysis, they have methodological checks and balances that provide a broader context for understanding results. Some outcomes are simply impractical to measure through quantitative data, and time constraints combined with the challenges accompanying research with detained, transient, and multilingual populations ruled out methods such as large sample surveys. Moreover, very few studies have produced validated research instruments that can be used to measure the success of one-time legal interventions, particularly among incarcerated programs. We therefore opted to conduct qualitative interviews that, while not necessarily generalizable, complement, contextualize, and give greater depth to quantitative findings. We will draw on these interviews

as we work with LOP program managers to create and test additional research instruments to measure the success of legal interventions such as the LOP.

Qualitative interviews can also help us understand, for example, how terms like “efficiency” and “success” are defined by different LOP stakeholders. Some detainees might evaluate success by whether they felt empowered to speak in immigration court or not, regardless of the case outcome, or they might believe the most important outcome is receiving a lower bond at a bond redetermination hearing, even if they are unable to afford the new bond amount. These are not the same standards of success defined by LOP providers, immigration court managers, immigration judges, immigration enforcement, or detention center personnel. Our research takes into consideration the importance of the LOP to each set of stakeholders in order to show the potential relevance of quantitative results—such as shorter case processing times—for each of these groups of stakeholders.

In the pages that follow, we present key findings on the LOP’s impact and discuss their implications.

## Key Findings

Below we present key findings on the relationship between the LOP and case time, in absentia removal orders, rates of representation, case outcomes/grant rates, and efficiencies in the immigration court and detention systems.

### Case Time

A key concern for many LOP stakeholders (immigration courts, detention facility staff, ICE, detained persons, LOP providers) is ensuring that cases are completed in as timely a manner as possible. Timely case completions are important to different stakeholders for different reasons. For example, while individual detained persons may seek to spend as few days in detention as possible, ICE must ensure it has sufficient available beds to house persons subject to mandatory detention under the law. For their part, the immigration courts seek to ensure that there are no undue delays in scheduling hearings. Yet, in spite of these different motivations, there is near universal consensus among stakeholders that a key indicator of success for the LOP is its ability to ensure that people do not spend unnecessary time in detention. This is not to say that all stakeholders support an accelerated court process. However, they do concur that those persons seeking repatriation through the removal process should be able to access removal quickly, and those pursuing relief from removal should not encounter undue delays in the immigration court process.

#### *Detained LOP participants have shorter average case times*

As mentioned in the introduction to this report, previous analyses of the LOP have suggested that its participants have shorter case times in the immigration courts. Our analysis similarly found that immigration court cases for detained LOP participants were completed in fewer average

days than national averages and comparison group cases.<sup>56</sup> As Figure 8 shows, the combined average time for LOP participants whose cases were completed while they were in detention was 27 days (column 3), versus 40 days for comparison groups (column 5), a difference of 13 fewer days for LOP participants.<sup>57</sup> Figure 8 also shows the average (mean) number of days for each category of relief application. As columns 1, 3, and 5 indicate, lower average case times for LOP participants were consistent across every type of relief application.

Figure 8: Mean Case Time by Relief Application Type for National Averages, LOP Participants, and Comparison Cases, January 1 – August 31, 2006

Relief Application Type	All Cases		LOP		Comparison	
	Mean Days	Total Number of Cases	Mean Days	Total Number of Cases	Mean Days	Total Number of Cases
No Application	22	29,465	15	5,184	24	19,978
Voluntary Departure	19	9,591	18	1,563	19	6,904
Other Application Combinations	163	754	135	137	170	525
I-589	163	2,650	151	318	165	2,215
212C Only	127	156	107	24	134	116
240A(a) Only	120	1,272	92	265	131	879
240A(b) Only	207	166	178	37	207	111
<b>Total</b>	<b>35</b>	<b>44,054</b>	<b>27</b>	<b>7,528</b>	<b>40</b>	<b>30,728</b>

**Note:** These overall means are not controlling for custody or representation status. See Figures 9 and 10.

Overall, cases that did not include applications for relief were completed in 15 days for LOP participants, versus 24 days for comparison groups—a difference of nine days. Similarly, cases that did include relief applications were also completed in fewer days for LOP participants. For instance, for LOP participants pursuing 240A(a) relief, case times were 39 days faster than for comparison groups. Below, we discuss the relationship between the LOP and these case time differences. We also describe potential cost savings to the federal government created by a reduction in case processing times.

*The LOP is associated with faster case time*

Vera’s analysis of case time before and after the start of the LOP found that case processing times (from initial Master Calendar Hearing to final case completion pre-appeal) have decreased for cases concluded in detention at all hearing locations across the country. That analysis shows, however, that case processing times have decreased more for cases that began at LOP sites. But

<sup>56</sup> This held true even when we excluded stipulated removal cases and controlled for representation status.

<sup>57</sup> We defined case processing time, case time, and case completion time as the time the case spent in the immigration courts before any appeals. We defined the initial Master Calendar Hearing as the start of the case and the date of the case decision/completion issued by the immigration judge, before appeal, as the end date. We do not presume that appeal information is not relevant, but in our analysis we wanted to first look only at time spent before immigration judges pre-appeal so as to avoid comparing cases on appeal with those that did not involve an appeal.



is the LOP responsible for this difference, or are there other factors that have led LOP participants' cases to move more quickly through the courts? We now examine this issue.

Although LOP participants had shorter case processing times overall in 2006 (see Figure 8), we cannot conclude that the overall differences shown are a result of the LOP. However, when we analyzed case processing times in a different way, looking at LOP participation in conjunction with type of relief application sought, representation status, and custody status at the time of completion, we did find that LOP participation was associated with shorter case time. Figure 9 below shows that when we isolated unrepresented cases concluded in detention, we observed a similar trend of shorter case time for LOP participants, with the exception of cases involving applications for voluntary departure.

Figure 9: Mean Case Time for Unrepresented Cases by Relief Application Type for Detained LOP Participants and Comparison Cases, January 1 – August 31, 2006

Relief Application Type	LOP		Comparison		Days <u>fewer</u> for LOP
	Mean Days	Total Number of Cases	Mean Days	Total Number of Cases	
No Application	5	4590	10	16082	5
Voluntary Departure	7	1326	5	5464	2 more
I-589	108	180	132	632	24
Other Application Combinations	87	278	99	410	12

We know that the LOP sites were selected because they shared common features, and unless some features(s) other than these have led the six courts we studied to process cases faster than all the other courts in the country—which we are unable to imagine—we can reasonably assume that there is a possible relationship between these differences in case times and the LOP. As we see in Figure 10 below, the pattern of shorter case times for detained LOP participants held true for cases with no applications for relief and applications other than I-589 even when those cases involved legal representation.

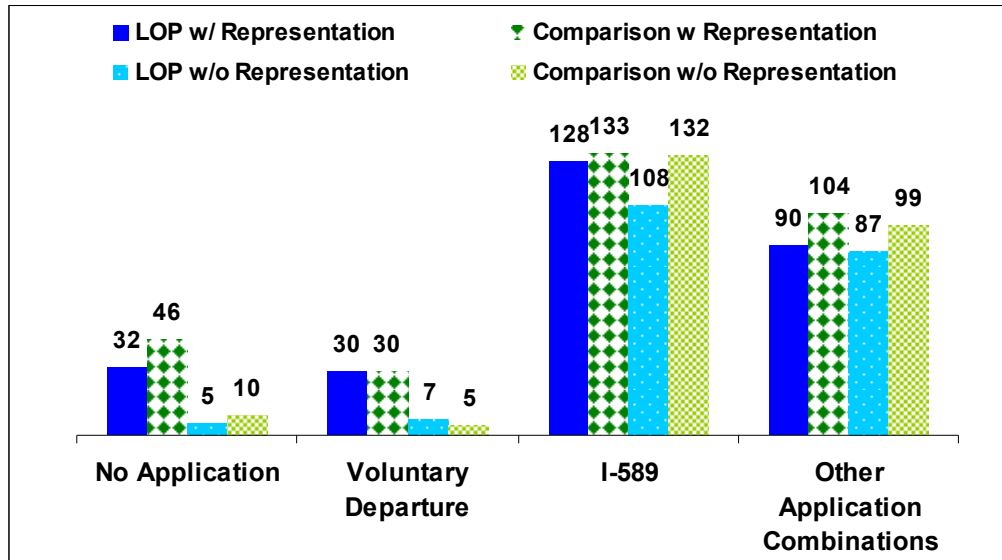
Figure 10: Mean Case Time for Represented Cases by Relief Application Type for Detained LOP Participants and Comparison Cases, January 1 – August 31, 2006

Relief Application Type	LOP		Comparison		Days <u>fewer</u> for LOP
	Mean Days	Total Number of Cases	Mean Days	Total Number of Cases	
No Application	32	309	46	1702	14
Voluntary Departure	30	160	30	793	0
I-589	128	73	133	966	5
Other Application Combinations	90	120	104	719	14

Figure 11 below shows the differences in case time for represented LOP participants and comparison groups that are presented in Figures 9 and 10. The first columns for each category in Figure 11 show the average case time by rates of relief application for LOP participants with legal representation, while the third columns in each category present the average case time by

rates of relief application for unrepresented LOP participants. Similarly, the second columns in each category show average case times by rates of relief application for comparison groups with representation, while the fourth (and last) columns in each category show average case times by rates of relief application for unrepresented comparison groups.

Figure 11: Mean Case Times for Detained Cases by Representation Status and Relief Application Type, January 1 – August 31, 2006



We conducted an additional analysis to see whether LOP participants' cases simply move through the system faster because perhaps they are in immigration courts with faster-moving dockets. At the suggestion of EOIR staff, we examined the relationship between case processing time and the time between the date a case was entered into the immigration court database and the date of the initial Master Calendar Hearing. Our thought was that if the shorter case processing times for LOP participants were simply a product of fast immigration court dockets, there would be a connection between quick scheduling (time from case input to first Master Calendar Hearing) and fast case processing times. We did not find such a pattern, leaving us reasonably sure that the LOP—or at least some other unidentified variable unique to the several thousand LOP cases we studied—had a shortening effect on case processing times.<sup>58</sup>

*Implications of reductions in case time*

**REDUCTION IN IMMIGRATION COURT TIME COULD LEAD TO COST SAVINGS.** As the use of detention—and bed space in many of the facilities hosting the LOP—has expanded, the program has continued to serve more and more people each year. However, the expansion of detention has outpaced the expansion of funding for the Legal Orientation Program, so the number of people

<sup>58</sup> Because of data quality concerns and time constraints, we were unable to test if LOP participants also had fewer adjournments (court appearances) than comparison groups, but in the recommendations at the end of this report, we discuss the importance of this additional analysis to any argument that a reduction in case time leads to cost savings.

receiving LOP services represents a shrinking percentage of the overall detained immigration court population each year. Many court stakeholders we interviewed—and indeed many system stakeholders more broadly—have expressed an interest in learning more about how reductions in case time might translate into resource savings for the immigration court and detention systems.<sup>59</sup> While we have not yet developed the economic models necessary to attach a monetary value to the time savings observed and have not yet studied the ways in which the immigration courts might save costs by reducing case processing time, fewer days in immigration court would logically and could actually result in savings of time and financial resources for both EOIR and, presumably, ICE. The faster cases are completed, the sooner detainees can be released or removed, reducing their time in administrative custody and creating additional detention space.

To illustrate this point we have conducted a few simple calculations using an average detention bed cost of \$97 a day.<sup>60</sup> For the purposes of this analysis, we are showing the savings to the detention system if court days and detention days were the same, which they almost certainly are not (i.e., a savings of five days in court also leads to a savings of five days in detention, even if the total number of detention days is always greater than court days). We are simply illustrating a point about the possible cost savings if every day less in court equaled a day less in detention. If ICE were to make available accurate data on the time that elapses between immigration court decisions and removal, we could determine what the potential cost savings to the detention system would have been in 2006. Even if a reduction in court days only led to a partial reduction in detention days, there would still be cost savings, the savings would just be less. If detention days were associated with court days so that five fewer court days meant five fewer detention days, or 10 fewer court days meant 10 fewer detention days, in 2006 LOP participants' cases would have cost \$3.2 million less in detention bed days. After the cost of \$1 million invested in 2006 in the LOP sites included in this study, approximately \$2.2 million would have been saved in detention costs. Below we describe how we calculated this.

Using the numbers shown in Figures 9 and 10, we multiplied the number of LOP participants' cases by the average reduction in detention days for LOP participants' cases. For example, 4,590 unrepresented LOP participants did not file relief applications. Those 4,590 spent an average of five fewer days in court than comparison group cases, or  $(4,590 \text{ cases}) \times (5 \text{ days}) = 22,950$  fewer total bed days. If each bed day cost the federal government \$97, and five fewer days in court meant five fewer days in detention, the savings caused by the reduction in court days for LOP participants' cases would be  $(22,950 \text{ bed days}) \times (\$97 \text{ per bed day}) = \$2,226,150$  less spent on bed days for unrepresented LOP participants without relief applications. Of course,

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<sup>59</sup> Meeting case completion goals and reducing case backlogs are a key management goal outlined in EOIR's 2005-2010 Strategic Plan. See U.S. Department of Justice, Executive Office for Immigration Review, Fiscal Years 2005-2010 Strategic Plan, September 2004.

<sup>60</sup> In recent testimony before Congress, ICE Director Julie L. Myers stated, as paraphrased in a news account, "the cost of deporting the estimated 12 million unauthorized foreigners in the U.S. would be \$94 billion, based on holding each person for 32 days in jail at \$97 a day, transporting them home at \$1,000 each, and covering the cost of ICE personnel. Myers acknowledged that the cost estimate was approximate since, for example, many foreigners might decide to go home on their own to avoid a month in jail." *Migration News*, October 2007.

this is just a hypothetical argument. It might be that court time has no impact on detention bed days at all, such that reducing court time does nothing to change the total time in detention. Or, it might be that only some of the shorter court cases are associated with a corresponding reduction in detention time. This might depend, in large part, on the amount of time ICE requires to process travel documents necessary for repatriation to most countries. Using the same formula of cases multiplied by average days difference, we calculated the following potential cost differences:

<u>Unrepresented LOP Participants</u>	<u>N</u>	<u>Average Days Difference</u>	<u>Cost Difference</u>
No Application	4,590	5 fewer	\$2,226,150 less
Voluntary Departure Only	1,326	2 more	\$257,244 <i>more</i>
I-589	180	24 fewer	\$419,040 less
Other Applications	278	12 fewer	\$323,592 less

<u>Represented LOP Participants</u>	<u>N</u>	<u>Average Days Difference</u>	<u>Cost Difference</u>
No Application	309	14 fewer	\$419,622 less
Voluntary Departure Only	160	0 difference	no difference
I-589	73	5 fewer	\$35,405 less
Other Applications	120	14 fewer	\$162,960 less

In total, actual differences in case time in 2006 may have saved \$3,329,525 in detention costs (the sum of the two “cost difference” columns above).<sup>61</sup> Even after we subtract the \$1,000,000 invested in the LOP in 2006, there is still a net savings of \$2,329,525.

Could the LOP further reduce detention costs if it were expanded? Even if the LOP only reduced bed days by five average days for 20,000 persons a year at a cost of \$97 a bed day, the cost reductions to the federal government would be almost \$10 million a year (20,000 persons) x (5 days savings) = (100,000 bed days), (100,000 bed days) x (\$97 a day) = \$9,700,000 total potential savings. If bed days could be reduced by 10 days for the same 20,000 persons or by five days for 40,000 persons, the cost reductions would rise to \$19.4 million a year. Even if the cost of the LOP needed to be doubled from \$2 million to \$4 million or tripled to \$6 million to attain these results, there could still be a substantial reduction. As we recommend in our conclusion, this hypothetical analysis shows that if the federal government is interested in increasing cost reductions as a result of legal access programs, one way to do so would be for ICE and EOIR to invest as many resources as possible into working together to determine the best formula for ensuring persons in detention spend the fewest number of days in custody as possible.

Because there is a long-term detention bed shortage—and an estimated more than 12 million foreign nationals in the United States unlawfully according to ICE Director Julie L. Myers—the reductions associated with the LOP might not mean actual monetary savings via cost reductions

<sup>61</sup> In computing the sum of the two cost difference columns, the \$257,244 greater cost of unrepresented applicants for voluntary departure is subtracted rather than added.

but, rather, cost diversion.<sup>62</sup> That is to say, instead of investing several million dollars in new detention beds above and beyond the current cost of detention, following the formula above, there would now be an additional 100,000 bed days available in existing facilities. In fact, then, the actual cost savings or diversion might be much greater than the several million dollars calculated here because instead of building new facilities, ICE could populate vacant beds in existing facilities. Or, the money saved could be devoted to the construction of new beds so that a greater volume of persons could be detained each year. No matter how we calculate the costs, if fewer days in court led to fewer days in detention for LOP participants, the federal government would see reduced costs.

ICE could experience even greater possible cost reductions if it could find a way to ensure that released LOP participants would return to immigration court. While the government does not expend money for the living costs of released persons in removal proceedings, we know that released persons do not always continue to appear for their immigration court proceedings and may, in fact, end up producing greater costs, as ICE is then tasked with locating and apprehending absconders. However, as we discuss below, detained persons with access to legal information have lower in absentia removal rates.<sup>63</sup> This means that ICE may be able to further reduce costs and utilize existing detention bed space by increasing the numbers of persons released from detention during their removal proceedings. Before discussing that point, we address below a few additional concerns about faster case processing time for LOP participants.

**REDUCTIONS IN CASE TIME MAY REDUCE POSSIBILITIES FOR GRANTS OF RELIEF.** While reductions in case time have the potential positive effect of reducing detention costs substantially, there may be downsides to shortening the number of days that an immigration court case lasts. In our interviews with legal representatives working with detained persons, we noted that attorneys are concerned that when cases move too quickly through the immigration courts, detainees may have fewer opportunities to pursue relief. Immigration attorneys we interviewed were also worried that fast cases might be associated with lower grant rates.

Overall, we did not see many differences in grant rates between LOP and comparison groups when we looked at case processing times for different application types, representation, and custody status. However, we did find a weak relationship between case processing time and case outcome for cases with I-589 applications, suggesting that cases with I-589 applications that took longer to complete received slightly more grants.<sup>64</sup> We are carrying out more analyses to see if we can better gauge what amount of case time might be related to positive grant rates. For example, this preliminary finding might simply suggest that cases that take more than a certain

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<sup>62</sup> *Migration News*, October 2007.

<sup>63</sup> Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program. Final Report to the Immigration and Naturalization Service* (New York: Vera Institute of Justice, 2000).

<sup>64</sup> We did see much higher rates of removal for cases that had only one hearing, which is likely a product of the fact that those respondents did not pursue representation or relief. Indeed, many LOP providers encourage those detainees who want to expedite their removal to request removal at the earliest possible Master Calendar Hearing.

number of days stand a better chance of being granted, but after that threshold, there may be no difference. For example, a case may need more than 50 days to have the best chances of success, but there may be no difference between 50 days and longer case times.

We also noticed that, contrary to the patterns we observed for all other types of relief, cases in which only voluntary departure was sought took longer for unrepresented detained LOP participants than for comparison groups. This difference may be a result of the fact that our analysis showed there to be a slightly greater chance of receiving a grant of voluntary departure when a case (1) takes slightly longer, and (2) is decided at the Merits Hearing level. In this instance, if the LOP is lengthening cases with voluntary departure as the only application, the LOP is, in fact, helping persons achieve the outcomes they seek—grants of voluntary departure. The added cost(s) then may be “worth” it, using a non-monetary standard to gauge the level of benefit(s).

Even though there may be relationships between case processing time and grant rates for certain relief applications such as I-589 and voluntary departure, we are not concluding that grants are solely the result of longer case times. More likely there are many other factors at play, such as the merits of the case, legal representation, and whether the case was determined at a Master Calendar or Merits Hearing.

#### *Released LOP participants have longer average case times*

Although detained LOP participants’ cases take fewer days on average, their cases follow the opposite pattern when they are released, at least in the few cases of released LOP participants. In fact, with only one exception, the few released LOP participants’ cases we analyzed took more time than comparison group cases following release.<sup>65</sup> Figures 12 and 13 below illustrate that just as there may be a relationship between LOP and *shorter case time* for *detained cases*, so, too, may there be a relationship between LOP participation and *longer case processing times* for *cases of persons released from detention*, at least for those cases involving no relief applications and cases with I-589 applications. The same patterns of longer case processing time for released LOP participants’ cases holds true whether released cases are represented or unrepresented. Interestingly, case time is one of the few outcomes we looked at for which the overall patterns for LOP participants did not change substantially with representation.

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<sup>65</sup> One possible explanation suggested by some LOP providers and stakeholders is that LOP cases take longer upon release because LOP participants have been informed of the value of obtaining representation for complicated cases and that participants are requesting more time to find representation upon release. Our findings suggest this explanation may be particularly salient for I-589 cases, for which we see dramatic differences in representation rates between detained and released LOP participants.

Figure 12: Mean Case Time for Unrepresented Cases by Relief Application Type for Released LOP Participants and Comparison Cases, January 1 – August 31, 2006

Relief Application Type	LOP		Comparison		Days <u>more</u> for LOP
	Mean Days	Total Number of Cases	Mean Days	Total Number of Cases	
No Application	146	192	101	1370	45
Voluntary Departure	164	36	130	155	34
I-589	292	19	207	133	85
Other Application Combinations	274	27	249	100	25

Figure 13: Mean Case Time for Represented Cases by Relief Application Type for Released LOP Participants and Comparison Cases, January 1 – August 31, 2006

Relief Application Type	LOP		Comparison		Days <u>more</u> for LOP
	Mean Days	Total Number of Cases	Mean Days	Total Number of Cases	
No Application	146	93	141	824	5
Voluntary Departure	165	41	121	492	44
I-589	297	46	263	484	34
Other Application Combinations	254	38	256	402	2 fewer

More research is needed to understand what may be causing these small numbers of released cases to take longer for LOP participants than their counterparts in comparison groups and to see if there are any negative implications of longer case times for released persons. We did find that rates of in absentia removal orders are not influenced by case time (i.e., so long as a released person appears for the first hearing after release, long case times do not seem to yield higher rates of in absentia removals). If a lengthy case for a released person is no more likely to lead to an in absentia order of removal (or a failure to appear) than a speedy case, there may not be any additional resource burden caused by the fact that these cases take slightly longer. These cases would need to be studied to understand what factors might lead them to take longer. If it is because now-released persons who have attended the LOP are motivated to seek representation and therefore request additional adjournments following release, these longer case processing times may in fact be a positive finding.

### **In Absentia Removal Orders**

Because of the small numbers of LOP participants released from detention, our study has not included a comprehensive analysis of the factors contributing to in absentia removal orders. However, reducing in absentia rates remains a main area of concern for both EOIR, which identifies this as a goal in its 2005-2010 Strategic Plan, as well as ICE, which is charged with the resource-intensive task of apprehending persons who fail to appear for their hearings.<sup>66</sup> Ensuring that released persons appear for court is also a broader public policy and public safety concern that is frequently mentioned in studies and reports about the detention and removal processes.

<sup>66</sup> U.S. Department of Justice, Executive Office for Immigration Review, Fiscal Years 2005-2010 Strategic Plan, September 2004.

Moreover, with better methods for ensuring that released persons continue to appear in immigration court, more persons could be released.<sup>67</sup> Releasing more persons in removal proceedings from detention could potentially save the detention system substantial amounts of money and result in better use of existing bed space. This could additionally save the government from needing to build more detention capacity, reducing costs further.

Our data and findings from other studies suggest that representation and access to legal information through programs like the LOP helps reduce in absentia removal orders.<sup>68</sup> Of course, the overwhelming majority of all persons whose immigration court cases begin in detention have their cases decided in detention and at the same hearing location at which they began.<sup>69</sup> Very few persons were released from detention in 2006. After we excluded stipulated removal cases, only 11 percent of all detained persons were eventually released, almost all on bond.<sup>70</sup> Therefore, when discussing in absentia removal orders, we are talking about only a fraction of the 11 percent of cases that are concluded upon a respondent's release from custody, a very small number.<sup>71</sup>

#### *Unrepresented LOP participants receive fewer in absentia removal orders*

Rates of removal in absentia vary greatly when we examine subgroups by representation status, charges, and type of relief from removal being sought. However, there is an overall pattern of unrepresented, released LOP participants having an average of 7 percent fewer in absentia

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<sup>67</sup> In absentia rates vary across immigration courts even when the volume of cases for released persons is the same. If we hold constant other variables while taking into consideration the released hearing location, further tests may show that the location to which the case is transferred following release has more of an effect on in absentia removal rates than other variables, or at least works with them to increase the chances of an order of removal in absentia. This could lead us to predict even greater chances of success for LOP participants, who currently have their released hearings at some of the immigration courts with the highest overall in absentia removal rates nationwide. More analysis of change of venue patterns and access to legal information may help explain these differences further as we continue to analyze these patterns in subsequent phases of research.

<sup>68</sup> Nonetheless, legal representation is still more strongly associated with reduced in absentia orders than are LOP services. In other words, participating in the LOP, while important, may have less influence over improved appearance rates than does having legal representation.

<sup>69</sup> In fact, we found that 71 percent of *all* completed cases received a decision from an immigration judge at the initial Master Calendar Hearing, and 94 percent of those cases resulted in orders of removal. In other words, the overwhelming majority of all persons in detention do not pursue relief and are ordered removed quickly, often at the initial Master Calendar Hearing.

<sup>70</sup> One hundred seventy five people in the comparison group were coded as having been released on electronic monitoring/ISAP. Only 130 people (including LOP, comparison cases, and some in the excluded groups) were released on their own recognizance. Notably, those cases coded as electronic monitoring were ordered removed in absentia 7 percent of the time. They were left in the comparison group since omitting them had little effect on the overall outcomes.

<sup>71</sup> Of the 44,054 cases we studied over an eight-month period, 4,834 involved persons released from detention, and of the released persons 37 percent or 1,786 received in absentia removal orders in 2006. This represents 4 percent of the total group we studied.



removal orders.<sup>72</sup> As Figure 14 below shows, for unrepresented I-589 applicants, differences were the most dramatic—13 percent fewer in absentia orders for LOP participants pursuing I-589 relief (21 percent for LOP versus 34 percent for comparison groups). On the other hand, there was no real difference in rates of in absentia removal orders for those persons who did not pursue relief from removal. Not surprisingly, as Figure 14 illustrates, those persons who did not identify a form of relief to pursue or did not otherwise seek relief were the least likely to continue to appear in court and the most likely to be ordered removed in absentia. These individuals accounted for three quarters (75 and 76 percent) of all in absentia orders.

Figure 14: Rates of In Absentia Removal Orders for All Unrepresented Released Cases

Relief Application Type	LOP		Comparison		Difference
	N	Percent	N	Percent	
No Application	192	75%	1485	76%	no difference when no application
All Applications (including VD)	81	12%	423	17%	5% fewer absentia orders for LOP cases with applications
I-589	19	21%	136	34%	13% fewer absentia orders for LOP cases with applications
Total (overall absentia)	273	56%	1908	63%	7% fewer absentia orders for LOP cases

(N= 4,834)

*Fewer in absentia orders with more legal information*

**PARTICIPANTS IN INTENSIVE LOP SERVICES RECEIVED IN ABSENTIA ORDERS AT LOWER RATES.**

Figure 14 shows that the overall rate of orders in absentia for unrepresented released persons who did not pursue relief was virtually identical for LOP participants (75 percent) and comparison groups (76 percent). Yet, when we isolate LOP participants who attended more than group orientations, the rate of orders in absentia for unrepresented persons not pursuing relief drops from 75 percent to 67 percent (not shown here).

While we cannot know for sure if the LOP is responsible for lower rates of orders of removal in absentia, Vera’s evaluation of the Appearance Assistance Project (AAP) found that participation in a supervised release program that facilitated access to legal and social services did help ensure that released persons continued to appear in immigration court.<sup>73</sup> In that study, groups categorized as “undocumented workers” apprehended in worksite enforcement actions in the New York City metropolitan region received many fewer in absentia orders when they participated in the AAP. While comparison group (non-AAP) “undocumented workers” were

<sup>72</sup> We are not showing in absentia rates by representation because it is impossible to identify which cases had representation for bond only and which had representation at the point of release. However, cases that had representation at any point had average rates of removal in absentia below 25 percent as opposed to 56 percent overall for LOP participants and 63 percent for comparison groups.

<sup>73</sup> Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program. Final Report to the Immigration and Naturalization Service* (New York: Vera Institute of Justice, 2000).

ordered removed in absentia 41 percent of the time, undocumented workers participating in AAP “intensive supervision” received in absentia orders only 12 percent of the time.<sup>74</sup> People in both groups were enrolled in the study without regard for the merits of their immigration court cases; instead, Vera staff considered factors such as the strength of their ties to the community and the immigration offenses with which they were charged. Though the AAP did not factor relief possibilities or merit into the screening tool used to enroll participants in the program, presumably the undocumented workers had few possibilities for relief aside from cancellation of removal.

The AAP study concluded that lower rates of orders in absentia for undocumented workers in the study was a product of the supervised release they received. In fact, the AAP’s one-on-one supervision sessions offered legal orientations based on the Florence Project’s rights presentation model as well as orientations to social services, such as mental health counseling.<sup>75</sup> We found similar results in our analysis of the LOP. LOP participants who received more intensive services, such as individual orientations or self-help workshops, were ordered removed in absentia at lower rates, even when they did not pursue relief from removal.

**LOP PARTICIPANTS WHO RECEIVE INTENSIVE SERVICES AND PURSUE RELIEF HAVE LOW RATES OF IN ABSENTIA ORDERS, APPROXIMATING THE RATES OF REPRESENTED CASES.** When we controlled for both level of LOP service and application type, we found even more dramatic differences in rates of orders in absentia. When we looked only at LOP participants’ cases, we observed that rates of in absentia orders for LOP participants who only attended group orientations and did not pursue relief from removal were 74 percent. On the other hand, rates of orders in absentia for all other LOP participants (those who attended more than group sessions and/or those who attended only a group session but pursued relief from removal) were only 24 percent. This leads us to conclude that outcomes of LOP participants can approximate the low in absentia removal rates for cases

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<sup>74</sup> The AAP provided supervised release from detention at two levels, intensive and regular. Intensive participants were persons initially detained by the INS and then released to the AAP; they had to report regularly to AAP supervision officers in person and by phone. Program staff monitored each participant and re-evaluated the risk of non-compliance or flight. Regular participants were noncitizens apprehended by the INS and then released on recognizance; they entered the program voluntarily. People in both types of supervision received information about immigration proceedings and the consequences of noncompliance, reminders of court hearings, and referrals to legal representatives and other services.

<sup>75</sup> Vera’s AAP intensive supervision program should not be confused with ICE’s current intensive supervision program, or ISAP. The AAP intensive supervision relied on graduated sanctions without electronic monitoring. The current ISAP program, on the other hand, relies heavily on electronic monitoring. In addition, the AAP included a strong emphasis on legal orientations and social services, which are not a central component of ISAP. The AAP relied on theories of compliance which posit that people will choose to “do the right thing” if presented with accurate information about processes that are fair and transparent—in contrast with electronic monitoring, which induces compliance solely through control. While compliance through control may be more effective in the short-run, theorists who write about procedural justice have noted that such methods may have the opposite of the intended effect in the long run. In the immigration context, electronic monitoring may lead people who would otherwise comply with the removal process to develop antagonistic attitudes. See Tom R. Tyler, *Readings in Procedural Justice* (Burlington, VT: Ahsgate, 2005).

with representation when respondents receive more intensive LOP services, just as we found with the 2000 AAP study.

**CASES WITH REPRESENTATION RECEIVED IN ABSENTIA ORDERS AT MUCH LOWER RATES.** While the combined total in absentia rate for cases we studied was 62 percent for unrepresented persons (56 percent for LOP and 63 percent for comparison groups, as indicated in Figure 14), represented persons were ordered removed in absentia only 17 percent of the time—more than three times less than represented persons (not shown here). Rates of removal in absentia were even lower for persons pursuing certain types of relief from removal. Figure 14 shows that unrepresented I-589 applicants who participated in the LOP were ordered removed in absentia 21 percent of the time. Our analysis also revealed (not shown here) that rates of orders of removal in absentia for represented I-589 applicants were only one third that figure, or only 7 percent. Unrepresented I-589 applicants in the comparison group received three times as many in absentia removal orders as the represented group (34 percent versus 10 percent). While representation appears to be more successful than the LOP in reducing in absentia removal orders for released individuals, in the absence of counsel for all detainees, LOP may be the next best method—and a more cost-effective approach—for reducing the rates of orders of removal in absentia.

## Representation

In our analysis of completed cases that began in detention in 2006, the nationwide representation rate was 14 percent; the rate was even lower for cases that began and ended in detention. Historically, representation rates at many LOP sites have been lower than the national average. As noted above, one criterion for selection of the original LOP sites was that they had low rates of representation, thereby ensuring that the program would provide the assistance to those most in need.<sup>76</sup> Indeed, at the detention centers hosting LOPs, the LOP generally represents detainees' only opportunity to talk to someone well-versed in the laws that govern immigration court and the removal process.

We know from our research and other studies that cases with representation have higher rates of relief applications filed, fewer orders in absentia, and higher rates of grants of relief.<sup>77</sup> Although LOP providers encourage individuals who are not able to obtain representation to develop the skills necessary to appear pro se, they also make pro bono referrals when possible and encourage detained LOP participants to pursue representation upon release. While

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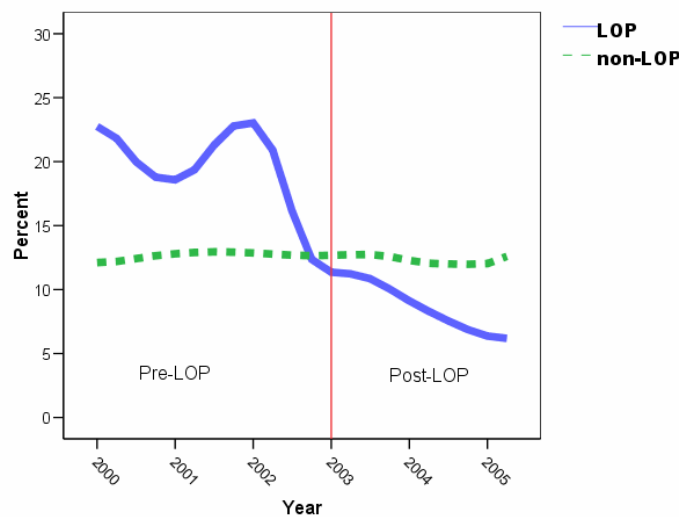
<sup>76</sup> In our analysis, “representation” signifies that there was a name (of either an attorney or an accredited representative) in the “attorney” field of the court database. The “attorney” field is filled in whenever an E[EOIR]-28 form is filed with the court. In our analysis, representation means there was an E-28 filed at some point in the case, before any appeals to the Board of Immigration Appeals.

<sup>77</sup> Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program. Final Report to the Immigration and Naturalization Service* (New York: Vera Institute of Justice, 2000); Ramj-Nogales, Jaya, Andrew Schoenholtz, and Philip G Schrag, “Refugee Roulette: Disparities in Asylum Adjudication,” *Stanford Law Review* 60 (2008). TRAC. Immigration Judges. <http://trac.syr.edu/immigration/reports/160/>

representation rates remain comparatively low at LOP sites, it appears that the LOP is increasing representation rates for individuals with relief possibilities and decreasing representation rates for individuals with no possibilities for relief.

Since the LOP began, there has been a steep decline in representation rates for persons with initial Master Calendar Hearings at LOP sites, particularly for those persons who do not pursue relief applications. At the same time, cases that begin at comparison sites have not experienced a significant change in representation rates. As Figure 15 shows, before the LOP began, detainees not pursuing relief at LOP sites (indicated by the solid line) had higher rates of representation than detainees not pursuing relief at non-LOP sites (indicated by the broken line). After the introduction of the LOP, this trend reversed.

Figure 15: Representation Rates for Detained Cases without Relief Applications, 2000 - 2005



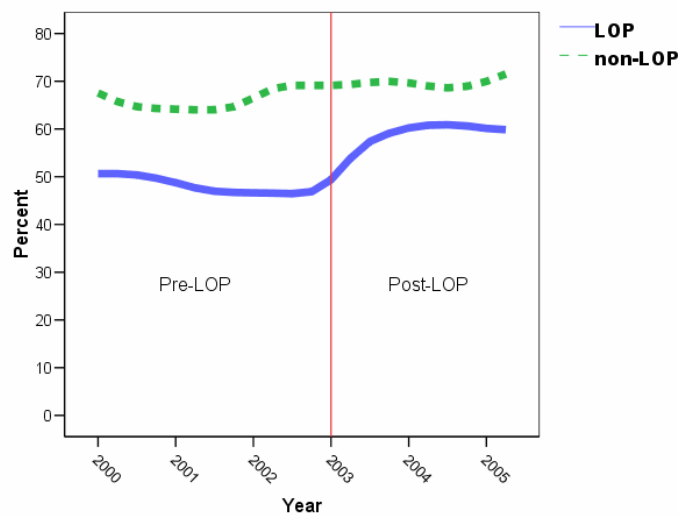
As Figure 15 shows, rates of representation for detainees who do not pursue relief are greater at non-LOP sites than at LOP sites. We believe this could be a positive trend. When attorneys are not available, LOP providers aim to help prepare detainees who are not pursuing relief to appear in immigration court pro se. In addition, the LOP group orientation briefly explains what an individual should expect from a legal representative. Some LOP providers—particularly ProBAR, in Port Isabel, Texas—believe that fewer program participants are hiring unqualified representatives, or “notarios,” than in the past. LOP providers believe that diverting persons away from unqualified attorneys or individuals who do not act in the client’s best interest is a positive outcome of the LOP.

The decreasing rates of representation for those who do not pursue relief at LOP sites may also reflect a decrease in the use of representation solely for bond hearings. ProBAR and other LOP providers told us that the LOP may be helping people make more informed determinations about bond—in particular by choosing not to request bond hearings when they are statutorily ineligible. Of course, it is also possible that there are simply fewer legal representatives available than in the past at LOP sites—and that without legal representation, many potential relief

applications go undetected. Nonetheless, most LOP providers reported observing fewer detainees seeking representation in voluntary departure or removal cases.

When we isolate representation rates for those who pursue forms of relief other than voluntary departure, we see a trend in the opposite direction.<sup>78</sup> Just as representation rates have decreased for cases without relief applications at LOP sites, *there have been large increases in the numbers of represented cases with applications for forms of relief other than voluntary departure at LOP sites.* When we look only at detained persons applying for forms of relief other than voluntary departure, there is an increase in representation rates at LOP sites since 2002—or about six months before the program began (Figure 16). This trend line continued to move up after the start of the LOP—though more gradually—while representation for cases with relief applications at comparison sites held steady. This finding points to the fact that the LOP may be contributing to the modest but sustained increase in representation for individuals identified by the LOP as potentially eligible for relief or those individuals who decide to pursue relief regardless of their eligibility, bringing their rates of representation closer to national averages. Thus, the LOP may be providing detainees with the information to make better decisions about when to pursue paid legal representation in removal proceedings.

Figure 16: Representation Rates for Detained Cases with Relief Applications Other than Voluntary Departure at LOP and Comparison Hearing Locations from 2000 to 2005



Although representation rates have increased in cases that involve relief applications at LOP sites, detained individuals continue to be represented at very low rates overall: in our sample, 87 percent of cases that started and ended in detention in 2006 had no representation at the time of the final decision by the immigration judge. As Figure 17 illustrates, representation rates also continue to vary by type of relief application and access to LOP services. While detained I-589 applicants who received LOP services had much higher rates of representation (60 percent – 29 percent = 31 percent) than some LOP participants pursuing other forms of relief, detained I-589

<sup>78</sup> Figure 15 and other figures from our historical analysis represent outcomes for cases that began and ended in detention.

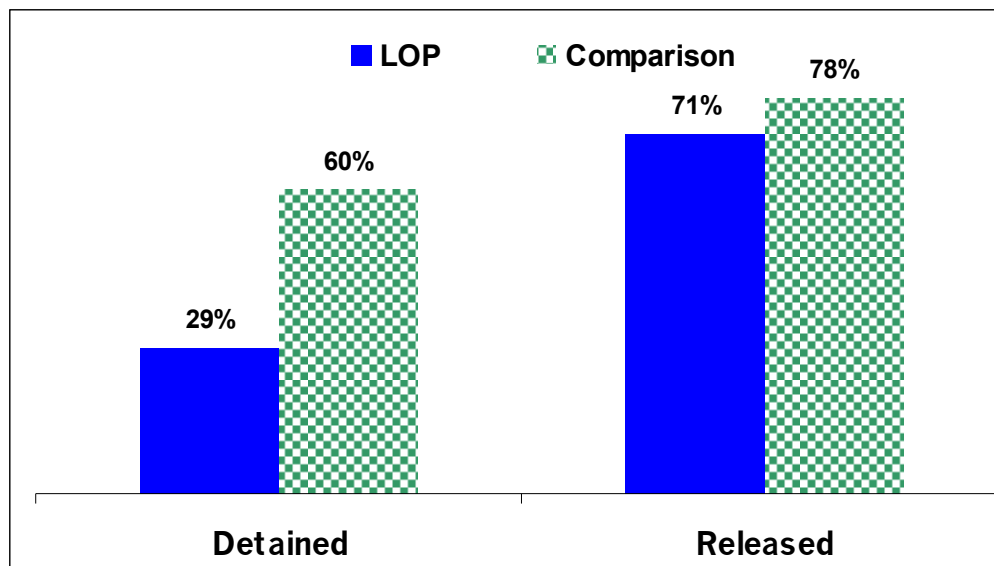
applicants in the comparison groups had twice the representation rates (60 percent). Since LOP sites were selected in part because of their low rates of representation, it is not entirely surprising to find higher rates in the comparison groups.

Figure 17: Rates of Representation by Application and Custody Status

Relief Application Type	Detained		Released	
	LOP	Comparison	LOP	Comparison
No Application	6%	10%	33%	38%
Voluntary Departure	11%	13%	53%	76%
I-589	29%	60%	71%	78%
Other Application Combinations	30%	64%	59%	80%
Total	13%		55%	

If it were not for the historical data showing that rates of representation have slowly increased for cases with relief applications at LOP sites, we might conclude from Figure 17 that LOP reduces rates of representation. But as Figure 15 indicates, representation rates at LOP sites have declined only for cases with no relief applications, while representation rates for all other applications have increased. In addition, as Figure 20 illustrates, the LOP may be helping I-589 applicants realize the importance of obtaining representation following release from detention.

Figure 18: Percent Represented for I-589 Cases (Detained and Released)



As Figures 17 and 18 both indicate, LOP participants pursuing I-589 applications have dramatic increases in representation—from 29 percent to 71 percent—after release from detention. Comparison cases also show an increase in representation—albeit less dramatic—when released from detention. We see a similar doubling of representation rates for released LOP participants pursuing applications for types of relief other than voluntary departure. More research will be needed to determine what is responsible for this increase in representation rates: one explanation is that people are moving to large cities with abundant legal resources after being released from detention; another is that LOP participants are working harder to secure representation after they are released.

### *Case outcomes*

Given the low overall rate of granting relief for people whose immigration court cases begin while they are detained (3 percent overall), it is not surprising that we observed few differences in case outcomes between LOP participants and comparison groups. However, when we looked at case outcomes by the *level* of LOP service, we found evidence suggesting that when unrepresented LOP participants received “intensive” LOP services (defined as any services beyond the group orientation), they had case outcomes that moved closer to those in cases with representation, as described below.<sup>79</sup>

### *Intensive LOP participants received grants of relief at higher rates*

**UNREPRESENTED DETAINED LOP PARTICIPANTS HAD HIGHER OVERALL GRANT RATES WHEN THEY RECEIVED MORE INTENSIVE SERVICES.** Grant rates for unrepresented LOP participants who received more intensive levels of service were five times those of participants who received group orientations alone (4.1 percent versus 0.77 percent) and three times the grant rate of comparison groups (4.1 percent versus 1.4 percent). However, it is difficult to draw conclusions about the significance of these figures, as case decisions by immigration judges almost always involve judicial discretion.

**UNREPRESENTED I-589 APPLICANTS HAD HIGHER GRANT RATES WHEN THEY PARTICIPATED IN INTENSIVE LOP SERVICES.** LOP participants who received more intensive services had I-589 grant rates of 9.4 percent versus 2.4 percent for those LOP participants who attended group orientations alone. This statistic may illustrate the impact of the LOP better than overall grant rates: presumably, most unrepresented detainees who pursue I-589 applications—regardless of

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<sup>79</sup> While almost all LOP participants receive group orientations, only 38 percent of the group orientation attendees in the group we studied received more intensive levels of service, in combinations of group orientations, individual orientations, and self-help workshops. To test the theory that more intensive levels of individualized service might be associated with different case outcomes, we created two categories of LOP participants: (1) group orientation only; and (2) more than group orientation.

whether they are LOP participants—need specialized information on how to prepare for a merits hearing.<sup>80</sup>

**UNREPRESENTED DETAINED LOP PARTICIPANTS WERE MORE LIKELY TO HAVE THEIR CASES TERMINATED BY IMMIGRATION JUDGES IF THEY PARTICIPATED IN INTENSIVE LOP SERVICES.** LOP participants who did not file applications for relief were three times more likely to have their cases terminated when they received intensive LOP services (3.1 percent versus 0.9 percent). Their termination rates were also higher than those of unrepresented comparison groups (3.1 percent versus 2.2 percent). While there are a variety of factors that can influence the decision to terminate proceedings, people who lack familiarity with immigration court processes may not understand how or when to contest information presented by ICE during the proceeding. They may not even know that it is possible to ask an immigration judge to terminate a case. The LOP providers and immigration judges we interviewed reported that decisions to terminate are often issued by immigration judges when a respondent successfully contests the removability charges asserted by ICE or when an application for citizenship or legal resident status is approved by USCIS. While not conclusive, the data point to the possibility that intensive LOP services are helping detained people learn the skills they need to advocate for termination of their cases.

Readers should be cautious about drawing conclusions about the causality of these observations because LOP participants are not required to participate in individual orientations; rather, they self-select for these services. Also, in some high-volume LOP sites, participants who have determined they have no relief or benefits to pursue are not prioritized for individual orientations. As a result, we might expect that detainees who have self-selected for help have the potential to learn the skills necessary for successful pro se representation. However, as is the case with legal representation, we cannot tell if better outcomes are the result of people with relief possibilities self-selecting for individual orientations, or if individual orientations might be responsible for helping people effectively argue for termination of their cases. It is most likely a combination of both.

#### *Unrepresented LOP participants have higher voluntary departure grant rates*

For most cases, we were not able to identify a relationship between participation in the LOP and case outcomes—perhaps because so few detained persons pursue relief and/or are granted relief nationwide. However, our analysis shows that persons who apply for voluntary departure after participating in the LOP are more likely to be granted voluntary departure than comparison groups (44 percent for LOP participants versus 27 percent of those in comparison groups).

This contrast in success rates for applications of voluntary departure is even greater when we compare subgroups. For unrepresented persons whose cases were concluded while detained, immigration judges granted voluntary departure applications 37 percent of the time to LOP participants versus 13 percent of the time for unrepresented comparison groups. Additionally, 41

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<sup>80</sup> We have not yet performed this particular analysis controlling for notice to appear charges and nationality, which may change the distributions we are reporting here.



percent of Mexicans who participated in LOP services were granted voluntary departure versus only 14 percent of Mexicans in comparison groups. LOP participants generally were more than twice as likely to be granted the voluntary departure they sought, while Mexican LOP participants were three times as likely to be granted voluntary departure.

There appears to be an unusually strong connection between seeking and being granted voluntary departure for persons whose initial Master Calendar Hearings occurred while detained in Port Isabel, El Paso, or Seattle. In fact, our analysis shows that over the past few years, detained persons in Port Isabel have had about a 90 percent chance of being granted voluntary departure when they sought this form of relief. This relationship suggests that LOP providers at these sites may be particularly effective in helping detainees to determine whether they should pursue this form of relief.

However, it is also possible that local procedures may be contributing to high voluntary departure grant rates. Under voluntary departure, persons must demonstrate their ability to pay for transportation back to their countries of origin. At Port Isabel, El Paso, and Seattle, these transportation costs were negligible for Mexican nationals. Since Port Isabel and El Paso are not far from the Mexican border, transportation costs are negligible. In Seattle, local operating procedures have enabled similar low-cost transport arrangements.

#### *Case outcomes discussion*

**THE LOP IS NOT A SUBSTITUTE FOR FULL REPRESENTATION.** Although participation in the LOP and representation both lead to higher relief application rates, higher grant rates, and fewer orders in absentia, the latter is more effective at producing these results. This is especially true for noncitizens who are released from detention. Even for detained persons with no applications for relief from removal, representation appears to help reduce the chances of removal by working to divert some cases otherwise likely to result in removal towards case terminations by immigration judges. While some of the stakeholders we interviewed remarked that these difference in outcomes between represented and unrepresented individuals may simply be a function of strong cases and good representatives finding each other, our data show that LOP participants who received intensive services but were unrepresented—including a number of participants with only voluntary departure applications—have higher grant rates and result in fewer orders of removal and fewer in absentia orders than unrepresented individuals who did not participate in the non-LOP participants.

It follows that the LOP is no substitute for representation—even for people who are not pursuing relief applications. Still, in some instances, access to intensive LOP services and pro se assistance can approximate the outcomes associated with legal representation. In others, obtaining access to legal information that can help a respondent appear pro se may be more efficient than obtaining full representation, particularly when the respondent simply wants to return to his or her nation of citizenship as quickly as possible. Indeed, it is in cases where there is no application for relief and cases that involve only voluntary departure that we see some of the clearest indications of the LOP's impact. The LOP providers we interviewed almost

unanimously agreed that providing detained persons with the information they needed to proceed with their immigration court cases was a principal part of their job, and that this had the collateral benefit of helping to make the immigration courts more efficient.

The immigration judges we spoke with believe strongly in due process, and want people who are statutorily eligible for relief to have access to resources like the LOP. They also want more people to appear in immigration court with well-prepared applications and documents—and, when necessary, representation. Many expressed frustration that the pro se model was not meeting the needs of detainees as well as representation would, although they also recognized that the LOP helps make the immigration detention and removal process more efficient.

More specifically, many judges said that detainees need additional assistance in filling out applications, especially lengthy and detailed I-589 applications. They also observed that detainees need help in writing suitable and effective narratives about their cases and in explaining any discrepancies between oral testimony and written documents.<sup>81</sup>

Most of the judges and LOP providers we interviewed believe that there is a limit to what the LOP can offer in pro se cases that involve legal research or complicated legal arguments. In our view, more research is needed to determine whether this belief is accurate—and if so, whether there are other legal service models that might provide assistance in such cases.

### **Efficiencies in the Immigration Court and Detention Systems**

The Legal Orientation Program depends on the cooperation of local ICE and detention facility personnel who volunteer to host the program in their facilities. In our qualitative interviews, detention facility staff repeatedly commented on the value of the program.

*Detention facility staff believe the LOP reduces detainee anxiety and behavior problems and makes detention “safer and more humane”*

Several detention facility administrators observed that by providing detainees with accurate information about immigration court processes, the LOP has reduced anxiety levels among detainees, with the result that there are fewer behavior problems. In more than one location, detention facility staff said that the LOP had done so much to improve the quality of life for detainees that if it didn't exist, they would find a way to replicate it. “Why would I object to the program?” one officer said. “It just tells them about their rights—it doesn't give them any more rights.”

Others echoed the sentiment that detainees should be provided with information about their rights. One warden told us that, in his view, the LOP helped make detention “safer and more humane.” Other detention facility staff said that by providing detainees with legal information and a sense that their rights had not been violated, the LOP has led to reductions in the number of

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<sup>81</sup> While LOP providers may be able to do more to help applicants prepare, limitations placed by EOIR on program activities prevent LOP providers from filling out application forms for participants. We found that many immigration judges were not aware of the fact that their agency and not the individual LOP providers had made this decision.

violent disturbances and even the use of segregation. Of course, these are subjective views expressed by a small number of people; it is difficult to confirm such impressions without access to detention center data on the use of segregation. Still, the fact that detention facility staff perceive safety benefits as a result of the LOP is itself an important finding.

In fact, even when we asked stakeholders, in confidential interviews, to be frank about any complaints they might have about the LOP, we heard relatively little. Some remarked that the program occasionally created confusion for new officers and that, because it required the assignment of additional personnel, it could be a burden. Others questioned whether the LOP did much more than “make detainees feel good.” On the other hand, some of the stakeholders we contacted declined to be interviewed—perhaps because they have negative opinions about the program.

*Immigration Judges at LOP sites believe the LOP helps the immigration courts run smoothly*  
While immigration judges often told us they wished the LOP could do more for detained people, many reported that LOP participants are better prepared to answer routine questions, know to verbalize responses instead of nodding their heads, ask fewer questions about court processes, and are more likely to pursue relief only when they are statutorily eligible, thus helping reduce the caseload of the immigration courts. In fact, many immigration judges told us their greatest critique of the program is that it does not offer more assistance with application preparation and direct representation.<sup>82</sup>

Some immigration judges did note that many detained people who have taken part in the LOP continue to appear fearful and confused in court. According to many judges, detainees were particularly confused when it came to answering questions about reserving the right to appeal. In one instance, a judge expressed frustration with a detainee’s confusion after learning that the detainee had attended the LOP, but this appeared to be an anomaly. Almost all the judges we spoke to told us that the LOP reduced confusion but did not eliminate it entirely. Court proceedings generally occur extremely quickly, and for many people, immigration court is their first experience with a court in the United States. Most LOP providers reported that detainees often want more time to make decisions and process the information they learn in the LOP orientation; many also said it was unclear to them whether a one-time intervention is really enough to help detainees understand more than “bits and pieces” of the immigration court and removal process.

Many immigration judges and ICE or detention personnel have told us (informally as well as in formal interviews) that legal orientations need to be offered by independent, non-governmental third parties if detainees are to trust them. These stakeholders noted that detainees are more willing to accept unpleasant information from independent, nonprofit attorneys than

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<sup>82</sup> The function of the immigration courts is not to make immigration policy but to interpret administrative and case law to adjudicate cases initiated by the Department of Homeland Security against noncitizens charged with removability from the United States. If a respondent is eligible for relief from removal under the law, it is the immigration judge’s duty to inform the respondent of this right and evaluate the merits of the case without bias. When a case is prepared well and both sides are represented by counsel, a judge is better able to evaluate the merits.

from detention facility staff. One ICE employee told us that, while he believes he provides detainees with the same information as LOP attorneys, he is not perceived as a credible source.

Echoing this sentiment, several judges said that detainees are more willing to accept disappointing information (with the result that they are less likely to seek adjournments) from independent nonprofit staff than from immigration judges. Detainees made similar observations, pointing out that while they were hardly eager to hear bad news about their chances of staying in the United States, they appreciated being told the truth and believed that LOP providers were giving them accurate and reliable information. In a few sites with very low overall representation rates—or in one case, when there was no telephone access to the outside world for several weeks—detainees who took part in the LOP reported that the program helped them make sense of the conflicting information they heard from their fellow detainees. Some were quite exasperated by the time they arrived at the LOP presentation, having been told that nobody would help them. LOP providers struggle against this perception, as they are often able to do little more than provide group and individual orientations and must explain to detainees that they do not have the resources to provide representation.

Finally, while immigration judges were, on the whole, extremely supportive of the program, they were concerned with what they viewed as a scarcity of immigration court resources—for expanded LOP services as well as for their own work. Several immigration judges said there was a need for more judicial appointments to help reduce individual caseloads and decrease adjournment time. Judges also commented on the need for additional immigration court clerks to aid in reviewing case law or drafting decisions. These comments suggest that some immigration judges believe that EOIR is currently underfunded, with the result that they may be reluctant to support the expansion of the LOP if they believe it will be at EOIR's expense.

## IV: Recommendations and Next Steps

This evaluation points to several areas that require further attention from Vera program staff and LOP providers.

1. **Pro bono referrals.** Most LOP providers reported an average of four pro bono referrals per month in 2006. However, not all of the detainees who were referred to pro bono representatives actually obtained representation; the number of successful referrals is much smaller than the 257 reported referrals. Pro bono referrals are not the primary focus of the LOP, but Vera and EOIR should nonetheless work with LOP providers to identify challenges and develop steps for improving access to pro bono counsel. Vera should also work to ensure that all LOP providers accurately report pro bono development efforts. Vera should then document whether pro bono representatives are interested in taking available cases and determine whether LOP providers have the resources they need to make referrals and ensure the placement of cases. Vera should also examine whether there are other factors that prevent referrals from being made. Finally, Vera should consult with EOIR and LOP providers to consider what plan of action, if any, might be taken to improve access to counsel for detainees.
2. **Determine priorities for participation of persons who do not have active immigration court cases.** Vera should work with each LOP site to determine needs of individuals who have signed stipulated removal orders before attending LOP sessions and to prioritize developing materials or presentations on stipulated removal procedures in LOP sites, particularly in those sites at which stipulated removals account for as many as 50 percent of immigration court cases. Similarly, Vera and EOIR should work together with LOP providers to consider any legal access materials that might be relevant for detainees not in removal proceedings, including those subject to expedited removal, reinstatement of removal, post-removal hearing review, or with prior orders of removal.
3. **Detainees not seen by the LOP.** Vera should work with each LOP provider to document the reasons why detainees do not receive LOP services. Then, building on what is learned, Vera and the LOP providers should work to ensure that as many detainees as possible are able to participate in the LOP. Vera and EOIR might also share their findings with detention facility staff and encourage them to take care of any logistical arrangements that are necessary to ensure full access to the program for anyone who is interested.

## Recommendations and Next Steps: LOP Impact

While not conclusive, the impact findings we described above point to a number of areas where additional research and program improvements are necessary, as well as several areas that might be of interest to ICE or EOIR as those agencies continue to explore ways of ensuring access to legal information and continued compliance with immigration court appearance requirements. While some of the next steps we recommend are relatively short-term activities, others may require a significant commitment of time and resources.

### Case Time

**Recommendation:** The finding that participation in the LOP reduces case times by an average of 13 days points to two important next steps. First, researchers should conduct further tests to determine whether the LOP is responsible for the reduction in case processing times we are seeing. At the same time, a cost assessment should be carried out to determine the impact of shorter case times. Fully assessing the cost savings created by the LOP would require access to ICE data, as it would be necessary to test the theory that court days and detention days are correlated. EOIR should work with Vera to develop these two research activities as part of a broader effort to assess the LOP's potential to help EOIR achieve goals related to reducing case completion times (as detailed in its 2005-2010 Strategic Plan) and in order to obtain definitive information concerning LOP's impact on the detention system.

**Recommendation:** Reduction in case time may impact possibilities for grants of relief. Vera should continue to develop predictive models in order to understand the relationship between the speed with which a case moves through the immigration court system and the chances of relief being granted in that case.

**Recommendation:** Released LOP participants have longer average case times. More analysis is needed to determine whether there are any negative effects associated with the longer case times of released LOP participants. Additional study is also needed to determine what factors are behind longer case times for released LOP participants. Finally, ICE data should be considered alongside EOIR data to determine whether there is a cost to either agency associated with longer case times for those released persons who appear at all of their hearings and comply with final orders of removal.

### In Absentia Removal Orders

**Recommendation:** We concluded that the low in absentia removal rates of LOP participants that receive intensive LOP services approximate those of individuals who obtain legal representation. This finding supports research conducted by Vera's Appearance Assistance Program in 2000, which also found that rates of in absentia removal rates were lower for individuals who had access to information about the immigration court process and the consequences of failing to

appear in court. Together, these findings suggest that EOIR and ICE will want to consider methods for improving access to legal information as they expand alternative-to-detention programs. In addition, these agencies might consider that studies in the field of procedural justice have found that people are more likely to accept and comply with judicial outcomes when they have access to accurate legal information and believe that the process is transparent and fair. Increased representation for released persons seems to be the best way to ensure continued immigration court appearances and avoid in absentia removal orders.

## **Representation**

**Recommendation:** While the LOP has succeeded in improving access to legal information for detained persons and appears to be assisting detainees in making informed decisions about when to seek paid counsel, it is not clear that the LOP is working as effectively as it might to help detainees obtain pro bono representation and to ensure access to legal representation for indigent detainees. LOP providers face numerous challenges in this regard, including limited financial resources and remote detention facilities with large populations. Additional work should be carried out, with additional funding, to explore innovative ways of increasing legal representation rates at LOP sites.

Additionally, given the limited availability of representation, researchers, LOP program managers, and providers should work together to study which cases are most in need of representation and which can proceed pro se. As part of that process they might determine (for example) that legal representation is always preferable to pro se representation for certain types of relief.

## **Case Outcomes**

**Recommendation:** Vera should work with EOIR to determine how intensive services might be used to maximize the impact of the LOP for all participants. More specifically, EOIR should document what costs would be associated with expanding intensive LOP services to all interested detainees at existing LOP sites. Related to this recommendation, LOP providers should, as described above, assist researchers and LOP program managers in determining which types of pro se activities should be enhanced and which may simply be unable to produce desirable outcomes for unrepresented persons. Vera should also work with LOP providers to document detainee learning in LOP program services. This process might include enhanced court observations using standardized instruments to record how detainees perform in immigration court after participating in the LOP.

**Recommendation:** The LOP is not a substitute for full representation. The government should also consider funding direct representation, perhaps beginning with a pilot program that focuses on a particular population (children or adults with mental illness, for example), or that tests the impact of full representation in one immigration court.

## **Efficiencies in the Immigration Court and Detention Systems**

**Recommendation:** A study should be carried out to test the theory, stated by several detention facility staff, that the LOP reduces detainee anxiety and behavior problems and leads to a reduction in the use of segregated housing. Such a study could provide additional data about cost savings or other impacts associated with the LOP. Additional research should be conducted, using standardized observation tools, to test the notion that LOP participants understand only “bits and pieces” of the immigration court process.



# Appendix I: Five-Year Life of Program Statistics (2003-2008)

This report analyzes statistics through December 31, 2006. However, because report readers may have an interest in more current numbers, we have included a table showing all program services from early 2003 when the program began through February 2008. We are additionally including a table that shows potential claims to United States citizenship reported to Vera by LOP providers in 2007.

Figure 19: LOP Services, 2003 – February 2008

Site	Court Hearing Location	Time Period	Number of Group Presentations	Average Number of Group Presentations Per Month	Group Presentation Participants	Average Number of Group Presentation Participants Per Month	Average Number of Participants Per Group Presentation	Number of Individual Orientations	Average Number of Individual Orientations Per Month
Denver	WSI	Jun 22, 2003 to Feb 29, 2008	825	15	10838	193	13	4858	86
El Paso	EPD	Jun 2, 2004 to Feb 29, 2008	618	14	13395	298	22	2587	58
Eloy	EAZ	Mar 7, 2003 to Feb 29, 2008	1258	22	19258	333	15	13345	231
Mira Loma	LAN	May 27, 2003 to Feb 29, 2008	585	10	16503	289	28	4258	75
Port Isabel	PIS	Feb 18, 2003 to Feb 29, 2008	1178	20	32568	540	28	4407	73
Seattle	AIR	Mar 17, 2003 to Feb 29, 2008	1122	19	11256	189	10	6144	103
Batavia	BTV	Feb 21, 2003 to May 18, 2005	365	14	1621	60	4	908	34
		Dec 1, 2006 to Feb 29, 2008	201	13	1627	109	8	505	34
Houston	HOD	Dec 1, 2006 to Feb 29, 2008	214	14	3011	201	14	848	57
Newark	NEW	Dec 1, 2006 to Feb 29, 2008	146	10	1225	82	8	409	27
Laredo	LAR	Dec 1, 2006 to Feb 29, 2008	51	3	509	34	10	150	10
San Antonio	SAD	Dec 1, 2006 to Feb 29, 2008	207	14	2424	162	12	704	47
San Pedro	SPD	Dec 1, 2006 to Feb 29, 2008	110	7	854	57	8	610	41
York	YOR	Dec 1, 2006 to Feb 29, 2008	213	14	2008	134	9	503	34
San Diego	CCA	Feb 1, 2008 to Feb 29, 2008	13	13	160	160	12	64	64
<b>Total</b>			<b>7106</b>		<b>117257</b>		<b>17</b>	<b>40300</b>	
# per year for all sites			1579		26057			8956	
# per month for all sites			132		2171			746	
# per workday for all sites			6		99			34	

Figure 20: Potential Claims to U.S. Citizenship among LOP Participants, January 1 – December 31, 2007

Site	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	# of Unique Individual Orientation Attendees Identified w/ Potential Relief of U.S. Citizenship
Denver	1	2	0	1	1	1	3	1	0	1	3	1	15
El Paso	1	0	0	1	3	3	1	5	2	5	3	0	24
Eloy	4	8	8	4	4	2	5	3	5	9	12	6	70
Mira Loma	0	1	1	0	1	3	5	0	1	1	1	0	14
Port Isabel	13	8	1	3	6	8	4	2	1	6	8	6	66
Seattle	3	4	0	0	1	0	0	3	1	1	4	0	17
Batavia	3	1	1	1	0	0	0	0	0	1	0	0	7
Houston	1	2	2	3	2	1	6	3	4	4	5	5	38
Newark	0	0	0	0	0	0	0	0	0	1	0	0	1
Laredo	0	0	0	0	3	0	2	3					8
San Antonio	2	2	3	0	0	0	0	4	0	1	2	2	16
San Pedro	3	4	3	4	1	1	1	3	2	2			24
York	1	1	4	1	3	1	4	4	1	0	2	0	22
<b>Total</b>	<b>32</b>	<b>33</b>	<b>23</b>	<b>18</b>	<b>25</b>	<b>20</b>	<b>31</b>	<b>31</b>	<b>17</b>	<b>32</b>	<b>40</b>	<b>20</b>	<b>322</b>

Note: Sites below the black bar began services in late 2006.

## **Appendix II: Data Organization and Analysis**

In this appendix we describe steps taken in organizing and analyzing court data and how we managed and re-organized data obtained from the Executive Office for Immigration Review (EOIR).

### **Sources of Data**

#### **EOIR**

EOIR maintains an administrative database that captures case-level information from its immigration courts and the Board of Immigration Appeals (BIA). At the time of our study, the immigration courts were in the process of replacing the Automated Nationwide System for Immigration Review (ANSIR) with Case Access System for EOIR (CASE). CASE is a new web-based system that will eventually replace ANSIR in all hearing locations. While both systems capture the same basic data elements, CASE will record a more updated and diverse set of elements and is intended to integrate databases for immigration courts and the BIA more effectively than ANSIR. There are also slight differences in functionality between the two systems that mean researchers conducting analysis with data extracted during the transition from ANSIR to CASE may encounter challenges to working with EOIR data, which we describe in detail throughout this appendix.

EOIR's Office of Planning and Technology (OPAT) provided Vera with a list of hearing locations that switched to CASE as of June 6, 2007. Knowing which sites were using each system enabled us to better identify and correct idiosyncrasies and errors unique to each database. We provide the list below for those readers not familiar with the dates of CASE implementation.

Figure 21: Rollout of Case Access System for EOIR (CASE)

Court Location	Date of Implementation
Arlington	March, 2005
Baltimore	July, 2006
Bloomington/Saint Paul	February, 2007
Buffalo/Batavia	September, 2006
Cleveland	September, 2006
Dallas	April, 2007
Eloy	April, 2006
El Paso	March, 2007
Guam/Honolulu	January, 2007
Harlington/Port Isobel	May, 2007
Hartford	October, 2006
Headquarters	December, 2006
Houston/Houston SPC	April, 2007
Imperial/El Centro	February, 2007
Lancaster	August, 2006
Las Vegas	August, 2006
Los Angeles	March, 2007
New Orleans	November, 2006
Oakdale	November, 2006
Philadelphia	December, 2006
Phoenix/Florence	January, 2007
Portland	April, 2006
Salt Lake City	August, 2006
San Antonio	May, 2007
San Diego/East Mesa	February, 2007
San Francisco	May, 2007
San Pedro	June, 2006
Seattle	January, 2006
Tuscan	January, 2007
Ulster/Fishkill	October, 2006
Varick	September, 2006
York	December, 2006

**Note:** All unlisted courts were still using ANSIR as of June 6, 2007

### Obtaining Data from EOIR

The Vera Institute’s previous work as an INS contractor on the Appearance Assistance Program, and our work on earlier phases of this Performance and Outcome Measurement Program (POMP) meant Vera researchers were already familiar with data elements collected by the immigration courts and the general reliability of different variables. During the first year of research, Vera staff carried out a historical analysis of court data that looked at aggregated data. In the second year, we analyzed individual-level data. Methods used during the first year of research are described in the report submitted by the Vera Institute to EOIR in mid-2006.

For the second year of research described in this report, we requested data from EOIR that was provided to us in three separate Microsoft Access tables labeled Bond, Proceeding, and Appeal. The three tables list data by the case-processing proceeding level, meaning that data

elements in the tables can be linked by either the unique proceeding number (IDNPROCEEDING), the unique case identification number assigned by the immigration courts (IDNCASE), or by the Alien identification number (A-number). The variables Vera requested and received are listed below organized according to the variable names assigned by EOIR.

Figure 22: EOIR Administrative Data Received

<b>BOND</b>	<b>PROCEEDING</b>	<b>PROCEEDING (cont.)</b>
IDNPROCEEDING	IDNPROCEEDING	EOIR 42b Application Received
IDNCASE	IDNCASE	EOIR 42b Application Decision
Alien Number	Alien Number	Other Application Received 1
Bond Hearing Request Date	NTA Date	Other Application Decision 1
Initial Bond Amount	Generation	Other Application Received 2
Bond Hearing Date	Court Input Date	Other Application Decision 2
Hearing Location Code	Base City Code	Adjournment Date 1
New Bond Amount	Base City Name	Adjournment 1 Calendar Type
Bond Completion Date	Hearing Location Code	Adjournment Reason 1
Decision	Immigration Judge Code	Adjournment Telephonic 1
	Immigration Judge	Adjournment Date 2
	Hearing Date	Adjournment 2 Calendar Type
	Initial Telephonic	Adjournment Reason 2
	Number of Charges	Adjournment Telephonic 2
	Charge 1	Adjournment Date 3
	Charge 2	Adjournment 3 Calendar Type
	Charge 3	Adjournment Reason 3
	Charge 4	Adjournment Telephonic 3
	Charge 5	Adjournment Date 4
	Charge 6	Adjournment 4 Calendar Type
	Asylum Application Received Date	Adjournment Reason 4
	Asylum Decision	Adjournment Telephonic 4
	Asylum Withholding Decision	IJ Decision Code
	212c Application Received	Proceeding Completion Code
	212c Application Decision	Proceeding Completion Date
	245 Application Received	Custody
	245 Application Decision	Case Type
	VD Application Received	Nationality
	VD Application Decision	Language
	VD Number of Days	Absentia
	WD Application Received	Decision Type
	WD Application Decision	Alien Attorney Name
	Suspend Application Received	E-28 Date
	Suspend Application Decision	Case ID
	EOIR 42a Application Received	Date of Entry
	EOIR 42a Application Decision	Case Completion Date

After Vera received electronic files containing the requested data, we imported the data contained in three tables into Microsoft SQL Server, a relational database that allows for easy manipulation of large datasets. SQL allows researchers to easily connect data from disparate datasets and databases without having to merge these data into single flat files. This results in significant time savings and other efficiencies when manipulating large data sets.

## **Vera's Legal Orientation Program (LOP) Data Repository**

The Vera Institute developed a Microsoft Access database called LOPster to collect programmatic data at each subcontractor site. As described in the body of this report, LOP providers use LOPster to record important information regarding LOP attendees and the level and intensity of services provided. Providers report the following information to Vera each month: alien number, first name, last name, sex, session type (group/individual/workshop), session date and time, presenter, workshop subject if applicable, and whether or not the person was in expedited removal. The sites also report more detailed demographic information about participants who receive individual orientations, as well as information about types of relief from removal or benefit applications before USCIS the detainee may have chosen to pursue. When we designed LOPster, we built it to extract this detailed data in anonymous form, by a unique number assigned automatically by the database and which replaces the A-number. We did this to ensure client confidentiality. As a result, information like potential forms of relief from removal identified by LOP providers cannot currently be matched with administrative data provided by EOIR. LOP providers collect data such as potential forms of relief purely for the purposes of program management and performance measurement—information which is reported each month to EOIR in aggregate form. LOP sites submit data on a monthly basis to Vera. After LOPster data submitted by the sites is checked for quality and accuracy by Vera researchers, they import the data into a central repository located in Microsoft SQL Server that allows us to aggregate the data and eventually match LOPster data with information in EOIR's administrative data.

## **Data Quality Check and Clean Up**

The dataset provided to Vera by EOIR included all immigration court proceedings with a hearing date between January 1 and December 31, 2006, amounting to 279,325 unique cases. We included in our analysis adults with initial Master Calendar Hearings in calendar year 2006 who were coded by the immigration courts as detained or released at some point during the first proceeding. In order to correctly select these cases from the 279,325 provided by EOIR, we analyzed and re-organized the data according to the steps described below.

First, we used SQL to run reports on the frequencies and distributions of the values within each variable (e.g., how many people of each nationality were in the immigration court system in a given month) to determine the quality and reliability of data. We looked for any illogical or anomalous data patterns and then checked to see if these patterns reflected larger problems within the database. With the help of immigration court administrators, OPAT staff, and other EOIR personnel, we made decisions about when to exclude information or when to assign new values (re-code) to data we received.

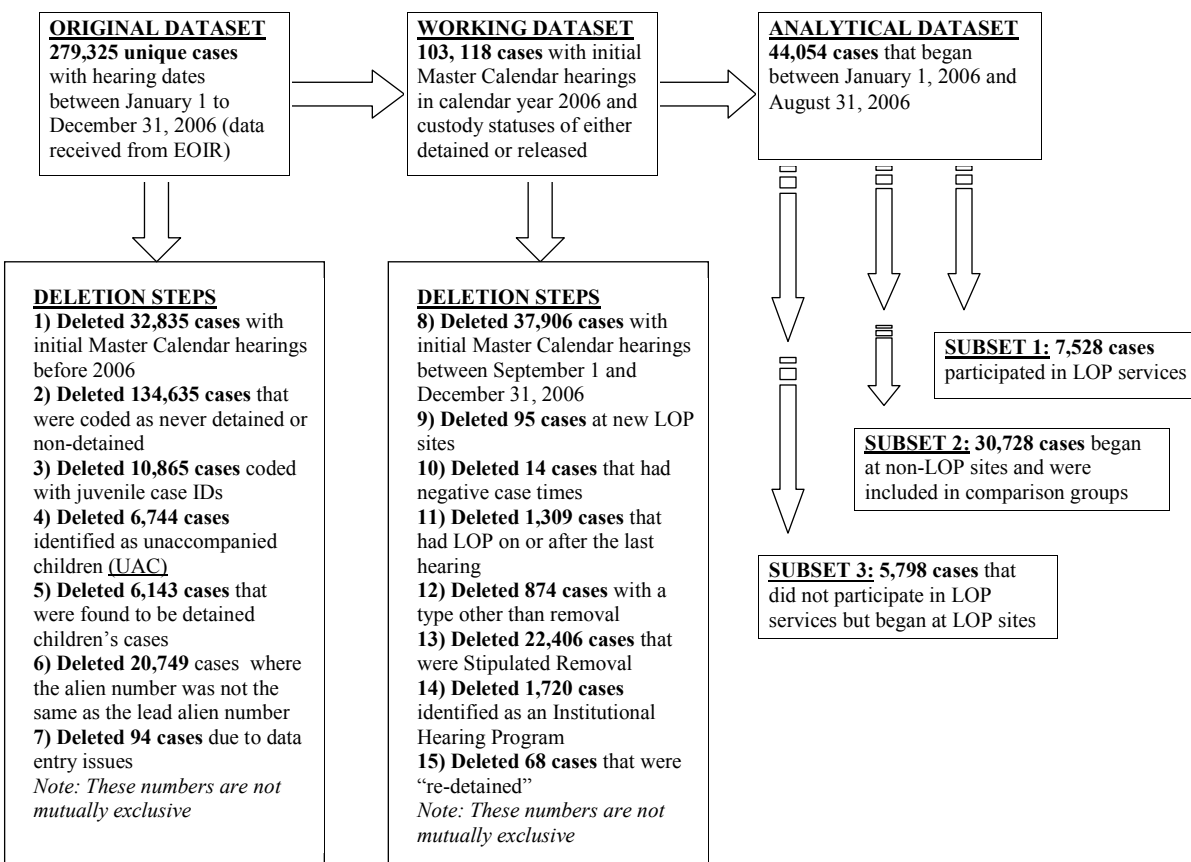
Creation of the final analytical dataset involved a number of steps in which the 279,325 unique cases provided to us by EOIR, covering January 1 to December 31, 2006, were deleted or added through a sequence of deletion steps that have been numbered for ease of reference and

discussion. These steps are depicted in the Figure 23 below. Each step listed in the flowchart corresponds to a deletion or addition procedure detailed below that is also identified by number.

## Generation

All EOIR records contain a variable known as the “generation.” The first proceeding in an immigration court case will always correspond to a generation value of 99, while each proceeding thereafter is numbered in *descending* order. Thus, the second proceeding in a case will always correspond to a generation value of 98, the third proceeding to a value of 97, and so on. In order to limit the dataset only to those with an initial Master Calendar Hearing in calendar year 2006, we excluded all cases that did not contain a proceeding with a generation value of 99, which meant that the initial Master Calendar began prior to 2006. Using this exclusion rule, we omitted 32,835 cases from the dataset, or about 12 percent of the total (step 1).

Figure 23  
Flowchart of Data Cleaning



## **Custody Status**

The EOIR data we received included cases with custody statuses of detained, released, and non-detained/never detained. We excluded all cases coded as never detained or non-detained. This ensured that we were comparing LOP participants only to other persons whose cases began in detention, which was indicated by a custody status of either detained or released. Ideally we would have liked to know each respondent's custody status at the time of the initial Master Calendar Hearing, but EOIR tracks information about custody status and representation at the proceeding level not the hearing level, making it impossible for us to discern the exact date of the change in custody status. Some cases also had a custody status value that was indiscernible, e.g., □, which we excluded. In total, we omitted 134,635 cases that were neither coded as detained nor released (step 2).

## **Children**

The EOIR data we received also included records for both adults and children. We did several things in order to ensure we identified as many children as possible.

First, we determined which values in the case ID variable identified juveniles. These values were: J (juvenile code), J1 (juvenile has turned 18 while in proceeding), UJ (unaccompanied juvenile), ND (NACARA dependents), and □U (an errant value that we assume to be a juvenile since no other code uses the letter U). We deleted all cases coded with juvenile case IDs. In total, 10,865 cases were omitted on this basis (step 3).<sup>83</sup>

Typically, immigration court administrators track information on children by using flags on the physical case files (e.g., a red sticker on the front of the file folder) and/ or entering a “J” code as the case identifier in their administrative database. However, this is an unreliable method for identifying all children in the immigration court system, in part because the case identification variable in the administrative database can only contain one value and can be overwritten, meaning a database user might overwrite the J code with a different unique identifier.

We thus requested data from the Office of Refugee Resettlement (ORR) that identified all unaccompanied alien children (UAC) in the care and custody of the Division of Unaccompanied Children's Services (DUCS) in calendar year 2006. By matching the A-numbers of the UAC to the A-numbers in the EOIR data, we were able to identify many more children's cases than was possible relying on the J code alone. This step required reformatting ORR data to match the data format used by EOIR, described below.

The Department of Homeland Security (DHS) now issues 9-digit A-numbers. However, EOIR's administrative databases only allow for 8-digit A-numbers. When entering A-numbers into EOIR records, immigration court staff have to remove the left-most digit of all 9-digit numbers and add it to the front of the last name. For example, if “John Immigrant” had an A-number 211-999-999, the number would be entered as 11-999-999 and the last name as

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<sup>83</sup> Exclusions are not mutually exclusive. The same case may be excluded for more than one reason.

“2Immigrant.” That same A-number was stored in the backend EOIR administrative database as 119999990. All numbers in the EOIR dataset we received were similarly formatted as 9-digit numbers with a 0 as the right-most digit.

We formatted the A-numbers provided by ORR to match the format provided by EOIR. We did so by removing the left-most digit from the ORR data A-number and placing a 0 to the right of the remaining number. This allowed us to match the A-numbers of 6,744 UAC in the immigration courts (step 4). Of these 6,744 UAC identified through our matching, 587 were not identified as children in EOIR’s records, and 6,157 were identified with one of the “J” codes. However, only 3,429 (58 percent) of these cases were properly identified as UAC.

Finally, we investigated which hearing locations handle UAC dockets. With help from OPAT and the court administrators, we identified 14 UAC hearing locations. We then examined the detained and released populations whose initial Master Calendar Hearings occurred at one of these sites. When court administrators indicated that certain hearing location codes were only assigned to detained children’s cases, we eliminated all cases at those hearing locations. As part of our data cleanup, we excluded a total 6,143 cases (step 5) as follows: 376 persons with an initial Master Calendar Hearing location code of CHI; 43 persons with a first hearing location code of NYC; 1,324 persons with a first hearing location code of PHO; 1,793 persons with a first hearing location code of SAD; 269 detained persons with a first hearing location code of ELP; 36 detained persons with a first hearing location code of LOS; 1,752 released persons with a first hearing location code of HLG; 545 detained persons appearing before Immigration Judge Margaret Burkhart with a first hearing location code of HLG; and 5 detained persons with a first hearing location code of SND. It is possible some of these cases were for adults, but by eliminating all of these cases, we increased our certainty that no children were included in the analysis.

Finally, one other clue as to whether or not an alien in our dataset was a juvenile was the filing of certain relief applications. We excluded one case where an alien applied for relief application code CI which indicates a child without parents under the Haitian Refugee Immigration Fairness Act (HRFA). We also excluded one case where an alien applied for CIII, which indicates a child abandoned under the HRFA.

## **Dependents**

We then eliminated all cases where the A-number was not the same as the lead A-number. When the lead A-number does not match the case A-number, it is possible one case is dependent on the other, which could skew the results of our analysis of the impact of the LOP on individual cases. There were 20,749 cases that had lead A-numbers that did not match the case A-number (step 6). These cases were omitted from the dataset.

## **Other Excluded Cases**

The remaining excluded cases appear to be the result of data entry errors. One case was associated with two different A-numbers. Ninety cases had case completion dates in calendar



year 2005, despite the fact that the initial Master Calendar hearing occurred in 2006. Three cases included hearing dates before 2006, which we explain below. In total, 94 cases were excluded for data entry issues (step 7).

After excluding data according to the criteria above, we filtered the data to include only those cases with initial Master Calendar Hearings in calendar year 2006 and custody statuses of either detained or released. *This yielded a total of 103,118 cases, our working dataset, which was the basis for creating the final analytical dataset defined by case start dates between January 1, 2006 and August 31, 2006.*

## Data Organization

### **Case Information: Proceedings and Hearings**

For the purposes of this research, Vera defines a case as the sum of all the proceedings involving a single respondent before the immigration courts. This means in our analysis a single case may contain numerous proceedings and numerous applications for relief that have been initiated and decided in the time between an initial Master Calendar Hearing and the final decision issued by the immigration judge in the last proceeding in the case. In many reports authored by EOIR, cases are evaluated and reported at the proceeding level. Vera researchers determined that for the purposes of our study, it would be confusing to report on proceedings as opposed to what we defined as “cases.” This is because in EOIR’s case management system, each case—from initial Master Calendar Hearing to final case decision—may be comprised of several “proceedings,” which are distinguished in EOIR’s data by “generation” numbers that descend from “99.” When a respondent’s detention status or hearing venue changes, the “case” before the immigration courts is typically transferred from one hearing location or immigration judge to another. When this occurs, the first proceeding in the case is closed, and a new proceeding is opened in the immigration court records. However, the case has not been concluded and reopened. For example, if an asylum seeker is detained at the initial Master Calendar Hearing and is later released and granted a motion to change of venue to a different hearing location, the pending asylum application remains active as it moves from one immigration court and judge to another, but a new “proceeding” is opened in the records. Thus, the number of days in each “proceeding” does not reflect how long a “case” was active in the immigration courts. Many studies of immigration court data conflate proceeding and case when they should not.

Additionally, because we wanted to measure any potential impact of the LOP on the immigration courts using the most consistent measures, we made a decision not to include in case processing time any days that might have accrued after the immigration judge’s decision was issued. When either party (ICE or the respondent) reserves the right to appeal, the case is not completed until the appeal deadline has passed with no appeal filings, until a decision has been issued on the appeal by the Board of Immigration Appeals, or, if a case is remanded to an immigration judge, until a decision has been issued. There are other scenarios that might also prevent a case from being immediately completed (or closed) after the immigration judge issues

a decision. Because of all these reasons, our definition of “case processing time” may not match definitions used by EOIR or other researchers. However, we believe our definition allows us to most accurately assess time for our purpose, which is to see if LOP is associated with any reduction or increase in the number of days a matter remains before the immigration courts.

Most of the 103,118 cases in our working dataset had only one proceeding, while 9 percent of the cases had more than one proceeding. We re-organized this information to produce one record for each case. In order to organize our data, we first needed to identify the date of each respondent’s initial Master Calendar Hearing date. This task was not as straightforward as we expected. The initial Master Calendar Hearing date is supposed to be recorded in the field labeled “hearing date” in ANSIR and CASE. However, when we began to analyze the data, we found that some adjournment dates were earlier than the “initial” hearing date. We discovered from conversations with court administrators and OPAT staff that this information is captured differently in CASE and ANSIR.

In ANSIR, the initial Master Calendar Hearing date is always entered into the hearing date field. If there is a request to change the initial hearing date prior to the actual hearing date, the initial date is overwritten with the new date. However, once the initial Master Calendar Hearing is scheduled in CASE, it cannot be overwritten. Users must thus enter a new “initial” hearing date in the first adjournment date field, with an adjournment reason “99.” If the date changes again, the “real” initial hearing date would be placed in the second adjournment date field, because overwriting is prohibited by CASE. Conceivably, the date in the second adjournment date field may actually be the initial Master Calendar Hearing date, and it may be earlier than the dates found in the hearing date and first adjournment date fields.

Therefore, for cases entered into CASE, the initial Master Calendar Hearing date may be found in the hearing date field or any of the four adjournment date fields. After consultation with immigration court staff, we determined that we should select the earliest date found in the first proceeding of each case and name this as the initial Master Calendar Hearing.

The final and/or latest hearing date was easier to identify in each case because it was the final date of the most recent proceeding. Unfortunately, we could not determine the number of hearings between the initial Master Calendar Hearing and the last hearing date in this analysis for a few reasons. First, we were not provided with a hearing or adjournment count that states how many hearings or adjournments occurred in a case. Second, while the initial Master Calendar Hearing date and corresponding data is never overwritten in the immigration court’s administrative database, the database allows a maximum of four adjournment dates per proceeding, after which the dates can be overwritten. In the data we received, if more than four adjournments occurred in a single proceeding, we would not be able to reliably discern the true number of adjournments. However, the overwhelming majority of cases in our analysis were decided at the initial Master Calendar Hearing, making this an issue irrelevant to the majority of cases we studied.

In ANSIR, hearing dates are displayed vertically, with the initial hearing date always shown on top. Then, four adjournment dates are arranged chronologically from top to bottom.

Figure 24: Screen Display of Hearing Dates in ANSIR

```
9/30/2006 <-- hearing date (fixed - will always occupy same space on screen)
10/30/2006 <-- adjournment date 1 (no variable label)
11/30/2006 <-- adjournment date 2 (no variable label)
12/30/2006 <-- adjournment date 3 (no variable label)
1/15/2007 <-- adjournment date 4 (no variable label)
```

In ANSIR, only four adjournment dates can be seen at once. If, for example, there are seven adjournments in all, the four adjournment dates on the screen will be collectively moved to another page and the remaining three adjournment dates will appear chronologically from top to bottom. The initial hearing date remains the same (Figure 25).

Figure 25: Screen Display of Adjournment Dates 5-7 in ANSIR

```
9/30/2006 <-- hearing date (fixed - will always occupy same space on screen)
2/10/2007 <-- adjournment date 5 (no variable label)
3/14/2007 <-- adjournment date 6 (no variable label)
4/14/2007 <-- adjournment date 7 (no variable label)
..... <-- (no adjournment date yet/ever)
```

*The first set of adjournments are moved to another page.*

```
10/30/2006 <-- adjournment date 1 (no variable label)
11/30/2006 <-- adjournment date 2 (no variable label)
12/30/2006 <-- adjournment date 3 (no variable label)
1/15/2007 <-- adjournment date 4 (no variable label)
```

The first set of adjournments that are moved can be called up by the user at any point. A possible indicator of a previous set of adjournment dates is the amount of time scheduled between the initial Master Calendar Hearing and the second hearing date for those cases with three adjournment dates and no fourth. CASE, however, shows all hearing dates on one single screen, so it remains a possibility that going forward, we may be able to generate a count of all hearings.

Through the EOIR data, we can also identify the immigration judge, custody status, and whether or not the respondent had any representation, by proceeding level. Therefore, we know the immigration judge, custody status, and representation status at the time of the first proceeding (but not the first hearing date). We also know the immigration judge, custody status, and representation status for the proceeding with the final/most recent hearing date.

#### *Representation status*

EOIR records the date the E[EOIR]-28 (notice of legal representative) was filed with the immigration court and the name of the legal representative. In ANSIR, there is room for one date

and one name only. If there is a change in representation within the same proceeding, the E-28 date and name of legal representative will be overwritten. We would not be able to see the change and are therefore unable to determine at what point in the case the respondent initially obtained counsel. EOIR also instructs users to enter the record for the most recent E-28 date, even if it is for the same attorney. For example, some attorneys will attach an E-28 with every document they submit to the court. Each time they do so, the most recent E-28 date will be recorded. We cannot tell with absolute certainty if the listed E-28 date is the initial filing date for representation. In CASE, there can be multiple attorney records, but the problem is that there is uncertainty about how the data is held for both ANSIR and CASE users. If there is an ongoing case that is carried over from ANSIR to CASE, immigration court staff we consulted were not sure how the data is displayed or stored in the EOIR administrative database.

Because of the limitations above and the immediate aims of our study, we focused on whether or not the respondent had representation for a case by creating a yes/no variable for representation. Any respondent with a populated E-28 date or representative name in the EOIR data would receive a 1 value (meaning yes), and all others would receive a 0 value (meaning no). At this point, we are not interested in looking at individual attorneys. These methodological decisions have meant we are unable in this analysis to distinguish between representation for the bond hearing only and representation in the removal proceeding.

### *Charges*

Charges on the notice to appear issued by ICE and recorded in the EOIR data are attached to each proceeding, like many of the variables discussed earlier. The user can enter up to six charges per proceeding. The charges often carry over from one proceeding to the next, but charges can either be added or dropped during each proceeding. Multiples of the same charge in a proceeding (in ANSIR) mean that these same charges have different grounds. This typically occurs with criminal charges but can occasionally happen with other charges. However, CASE will not allow multiple entries of the same charge and will produce an error message.

The charges are populated fairly reliably. The charges in CASE are selected from a drop-down menu, reducing user input error. In ANSIR, the charges are manually entered, but there is no possibility of entering gibberish into that field because the text is controlled, meaning the database will reject information that is not entered according to administrative rules. However, there is always the possibility of entering the wrong charge in either ANSIR or CASE.

Because charges can be contested and dropped or ICE can add charges at each hearing, we created a list of all unique charges that the respondent faced in a case. This way, we retain the possibility of grouping persons based on certain charges, although the groups may not necessarily be mutually exclusive.

### *Relief applications*

Relief applications, too, are attached to proceeding-level data and can change by proceeding. However, information on all relief applications, regardless of when they were filed with/accepted

by the immigration court, are attached to the case itself. Thus, we accumulate all applications and application decisions for each case without regard to proceeding.

We reorganized the data so that each relief application is its own variable, simply recording whether or not a particular application was filed, with a 1 value for yes and a 0 value for no. The only set of applications we did not separate is asylum, asylum withholding, and withholding under the Convention Against Torture (WCAT), all of which are applied for on the same I-589 form. Upon receipt by the immigration court, both asylum and asylum withholding are recorded as filed, but practices for recording this data are inconsistent because most court clerks will not be able to determine from looking at an application which of these forms of relief is being sought. WCAT, too, is applied for using the same application, but court clerks are expected to record this application in the “other application type” variable. Given concerns expressed by court staff about the reliability of these categories, we grouped the three applications together into the I-589 category. Grouping the three applications also increased the size of the subset of cases that included I-589 applications and gave us a larger group to analyze.

Unfortunately, we could not use the date found in the variable “asylum application receive date” because of reliability concerns communicated by immigration court staff. The date of this variable changes with each proceeding because of a programming error that prevents the I-589 date from following the case when it is transferred between locations. The clerk at the new proceeding location will create a new date for that I-589 application, typically matching the input data.<sup>84</sup>

Aside from the I-589 applications, the EOIR court data provides yes/no variables for the following main types of relief applications: 212c, 245(i), voluntary departure, cancellation, EOIR42A, and EOIR42B. A value of X for these application variables indicates receipt by the immigration court, while a blank value or a null value means that the court did not receive an application for that particular form of relief.

Many other, less frequently occurring relief applications are recorded using unique codes in the two variables labeled “other application type.” We pulled each distinct application from the two variables for “other application type” and produced yes/no variables for them. A total of 27,700 applications were filed by detained and released adults who had their initial Master Calendar Hearing in 2006.

#### *Case decision, completion dates*

EOIR also tracks the decision for each of the applications. For our working dataset, we took the decision for the application from the most recent proceeding in the event that there is more than one of the same application submitted. There are three types of decisions that are found in the original proceedings related to a respondent’s case. One decision, as discussed earlier, is associated with an application received by the immigration court.

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<sup>84</sup> EOIR data lock in one date as the asylum application date. We did not have access to that variable.

Another decision is the case decision handed down by the immigration judge. Cases typically have one decision issued by the immigration judge, but, because some cases may have multiple proceedings due to appeals or administrative opening of previously closed cases, we used the first decision issued by the immigration judge as the case outcome in this analysis.<sup>85</sup>

The third type of decision is the one issued by the Department of Homeland Security (DHS), referred to as an “other completion” in EOIR records. This decision is typically an administrative order for a transfer or change of venue but can also be a termination of the case or administrative closure or other decision to suspend the case at DHS’s request. We understand that a decision in this field does not necessarily mean that a case is closed. It can be reopened at any time as the case “sits on the shelf” rather than concludes.

The date that we used as the case completion date is found in the original data provided by EOIR as the “proceeding completion date.” This is the date that accompanies the immigration judge’s first decision in a case. Typically, this date is the same as the date of the last or latest hearing date in a particular proceeding, but this is not always so. If the proceeding completion date occurs after the last hearing date, there may be a written decision because the judge reserved decision at the conclusion of the last hearing and then issued one in writing thereafter. It is possible for a judge to issue a written decision on the same day as the last hearing, but we learned from immigration court administrators that this is not common. Usually, when there is a proceeding completion date on the same date as the last hearing date, the decision is an oral one.

Oddly, there are some proceeding completion dates that occur prior to the last hearing date. However, this is only possible where data were collected using CASE. In ANSIR, system edits do not allow the proceeding completion date to be earlier than the last hearing date. One would have to delete or change the last hearing date to be no later than the proceeding completion date in ANSIR. In CASE, because the user cannot change or overwrite the entries in the hearing date field or adjournment date fields, a proceeding completion date can be entered that is earlier than the last hearing date. For our purposes, we confirmed that this occurs at CASE sites at the time of the first hearing date. If so, then the case time is zero days. If not, then the case was excluded.

Another completion date that exists in the original data is the “case completion date,” but we largely ignored this variable in favor of the proceeding completion date due to its mixed reliability and the way we constructed our working dataset. If either side, the respondent or ICE, reserved the right to appeal, then there should be no case completion date for a case in which the appeal period has not elapsed. Theoretically, if the parties who reserved the right to appeal do not file an appeal within 30 days of the immigration judge’s decision, the case is closed. But this does not often happen, according to immigration court administrators. We confirmed this by checking to see if those with a case completion date also had an appeal filed, and they did. Also, since the case completion date does not necessarily correspond to the first decision issued by the immigration judge, we did not find this variable as relevant as the proceeding completion date.

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<sup>85</sup> The decision code found in the proceeding will always represent the immigration judge’s decision, regardless of appeal. If there is a motion to reopen a case or there is a motion to re-calendar or the BIA or circuit court remands the case, a new proceeding will be opened for that same case.

However, we did use the case completion date to confirm that all of the cases with a case completion date also had a decision code issued by the immigration judge. We discovered that there were 2,100 of 103,118 cases with a case completion date but with no immigration judge decision. However, the other completion decision variable was populated. We included these in our working dataset.

#### *Orders of removal in absentia*

If the yes/no in absentia variable that accompanies the final decision in the case is yes, then we coded our in absentia variable with a 1. Otherwise, the variable received a value of 0.

#### *Nationality and language*

The only detailed demographic information collected by EOIR is language and nationality. The immigration courts enter the nationality information found on the notice to appear. This information is not always accurate, as it is sometimes changed for a respondent by case or by proceeding. We used the nationality from the most recent proceeding in the most recent case as the respondent's nationality.

Language, too, in some cases changed by case or proceeding, and it did so more frequently than nationality. Depending on the court, the recorded language may actually be the language of the interpreter for either the respondent or the respondent's witness, as opposed to the respondent's native or most fluent language. We used the language from the most recent proceeding in the most recent case as the respondent's language.

### **LOP Services**

From the data we collected from LOP providers and stored in Vera's LOPster repository, we matched the A-numbers reported by the LOP sites to the EOIR data. In order to do so, we had to format the A-numbers found in LOPster to match the A-numbers found in the EOIR data. As with the data collected by ORR, we had to remove the left-most digit of a nine-digit number and attach a zero as the right-most digit. Because some persons had unknown A-numbers or no A-numbers or poorly reported A-numbers, we excluded those (most records without A-numbers did not make it into our LOPster repository in the first place).

We then created variables in our working dataset that would track the site at which the detainee received LOP services, the level of service—group (yes/no), individual (yes/no), and workshop (yes/no)—and the corresponding earliest dates of service. If the person received LOP services at a second site, we also created variables to capture that second site and the additional services.

### **Working Vera Dataset**

After organizing the data according to the steps described above, we were left with a *working dataset including records on 103,118 unique cases that were either “detained” or “released” during the first proceeding.*

## **Total Original Sample**

Before we excluded any cases, the total number of cases in the original data file used for our analysis (every court case that was coded as “detained” or “released” with an initial Master Calendar Hearing between January 1 and December 31, 2006) is **279,325**.

## **Cases Excluded During Analysis**

After our first round of exclusions, during the data clean-up phase, we eliminated cases enumerated throughout this appendix—largely because they were for persons who were “never detained” according to court records, though also to exclude juveniles’ cases and problematic records. We were left with **103,118** cases, what we have termed the working dataset.

## **LOP Cases**

In total, there were **15,747** individuals in the 12-month matched dataset who received LOP services. At the six LOP sites studied in our research, 15,022 received LOP services, and 725 received services at the six LOP sites that began operations in 2006.

- 86 percent (N=13,537) participated in the LOP on or before the initial Master Calendar Hearing, including 1,174 cases in which the initial and last hearing occurred on the same date.
- 6 percent (N=901) participated in the LOP between the initial Master Calendar and last hearing.
- 8 percent (N=1,309) participated in the LOP on or after the last hearing date (if the last hearing date is different from the first hearing date). Of these persons, 1,259 participated in the LOP after the last hearing date, and 50 participated in the LOP on the date of the last hearing.

## **Comparison Group Cases**

After 15,474 cases were identified as receiving LOP, 87,371 cases remained in our original non-LOP group. **18,927** of these cases were scheduled at immigration courts at LOP sites, but these respondents did not participate in LOP services. They were grouped as “LOPsites\_noLOP.” We analyzed these cases as a separate group but generally did not report on them in our analysis as we cannot explain why these individuals did not receive the LOP. This left **68,444** cases from the original 103,118 in the non-LOP group.

We then excluded a number of cases along several lines, often because their unique characteristics made them inappropriate to compare to other cases in removal proceedings.



## **Excluded Cases**

*Initial Master Calendar Hearing occurred between September 1 and December 31, 2006 (37,906 cases)*

Contracts with the six new LOP sites began in September 2006, but we officially started data collection from these sites on December 1, 2006. We decided not to include cases with an initial Master Calendar Hearing in the months from September to December 2006 so that we could use the cases at these new LOP sites in our comparison group from January 1 to August 31, 2006.

Without these cases, we would have had a much smaller comparison group. In all, 37,906 cases were deleted because their initial Master Calendar Hearings fell between September 1 and December 31, 2006 (step 8).

*LOP new sites (95 cases)*

Even after excluding cases whose initial Master Calendar Hearing occurred after September 1, 2006, there were still 95 respondents who received LOP services at one of the six new LOP sites before September 1, 2006 (step 9). They were excluded as well.

*Negative case time (14 cases)*

There are 3,295 cases that initially appeared to have a negative value for case processing time. Most of these negative case times were corrected, and 14 others were excluded (step 10), according to the following rules:

- If the initial Master Calendar Hearing was entered into the EOIR database using CASE rather than ANSIR, then the court completion date was changed to be the same as the last hearing date, resulting in a case processing time of zero days. Unlike ANSIR, CASE allows the clerk to enter a completion date that may be earlier than a previously scheduled future hearing date. The future hearing date cannot be modified or deleted from the system. Thus, we make the modification so that the date sequence appears logical.
- Any case with negative time that occurred at a local court using CASE but prior to the month in which CASE was implemented was excluded.
- If the case decision was “terminated,” the court completion date was changed to be the same as the last hearing date.
- Two cases with two proceedings were also excluded because of obvious data entry errors.

*LOP on or after the last hearing (1,309 cases)*

There were 1,309 persons who received LOP services on or after the *latest hearing date* who were excluded from our matched comparisons, though we do report on this subgroup separately (step 11).

*Cases of a type other than removal (874 cases)*

We eliminated all 874 cases not coded as removal cases, though we do report on some of these subgroups separately (step 12). We removed cases that were referred to the courts after being in an expedited removal process, including cases coded as asylum/withholding only, credible fear/reasonable fear review, and claimed status review. We also removed a handful of cases coded as continued detention review, exclusion, NACARA adjustment, and rescission. We report separately on the cases that began in expedited removal.

*Stipulated removal (22,406 cases)*

We coded 22,406 of the detained/released cases as stipulated removals in calendar year 2006 (step 13). When we report national numbers and averages, we include these cases, but in our analysis of case outcomes, we have excluded stipulated removals in order to have more consistent comparisons.

*Institutional Hearing Program (1,720 cases excluded)*

We removed cases identified as Institutional Hearing Program cases from our analysis (step 14).

*Custody from “released” to “detained” (68 cases excluded)*

Very few individuals are re-detained after being released from custody. Of the 103,118 cases in the analysis, only 68 cases were re-detained. Because these cases likely represent unique situations, we did not feel it was appropriate to include them in our comparisons of other cases that were completed in detention, so they were deleted (step 15).

*Electronic Monitoring*

We did not exclude cases coded as electronic monitoring or Intensive Supervision Program (ISAP) from our overall analysis, but we did exclude them from certain analyses, such as in absentia rates, because of the different conditions to which this released population is subjected.

**Total Excluded Cases (59,064 of 103,118)**

Because some cases fell into more than one category of excluded case, the total number of cases excluded from our analysis does not equal the sum of the numbers listed above. In total, we excluded **59,064** cases from our original sample, *leaving 44,054 completed cases that had initial Master Calendar Hearings between January 1 and August 31, 2006.*

In total, we ended up excluding slightly more than half of the original LOP and comparison group cases.

The **44,054** cases that began between January 1, 2006 and August 31, 2006 were distributed into the following subsets:

- **Subset 1: 7,528** (17 percent) participated in LOP services.
- **Subset 2: 30,728** (70 percent) began at non-LOP sites and were included in the comparison group.
- **Subset 3: 5,798** (13 percent) did not participate in LOP services but began at LOP sites and were included in the analysis to look for any trends. They generally were excluded from our report because we cannot account for contamination or the unique conditions of these cases that may have prevented them from receiving LOP services.