

*Office of Enforcement and Removal
Operations*

**U.S. Department of Homeland
Security**
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: Field Office Directors
FROM: MONICA S
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SUBJECT: Updated Guidance: ERO Support of the U.S. Department
of Justice Executive Office for Immigration Review Legal
Orientation Program for Detained Noncitizens in ICE
Detention Facilities

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Purpose:

This memorandum provides updated guidance to Enforcement and Removal Operations (ERO) Field Office Directors (FODs), Deputy Field Office Directors, Assistant Field Office Directors, and Officers in Charge on best practices in support of the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) Legal Orientation Program (LOP). The guidance in this memorandum is with respect to EOIR LOP only, as distinct from other legal right group providers because EOIR LOP is a federally funded and supervised contract.¹ ERO is issuing this guidance in support of increased information sharing and accommodations for DOJ EOIR's LOP.

This memorandum replaces the previous memorandum *Updated Guidance: ERO Support of the Department of Justice's Executive Office for Immigration Review Legal Orientation Program*, issued on November 30, 2017, and provides an updated list of U.S. Immigration and Customs Enforcement (ICE) detention facilities in which an LOP currently operates.

Background:

For over 20 years, the DOJ EOIR Office of Legal Access Programs has worked to improve the efficiency of immigration court proceedings by increasing access to information and improving representation for individuals in proceedings. In 2003, EOIR launched the LOP to

¹ See e.g., 2008 Performance Based National Detention Standards (PBNDS) (section 37 in Part 6), 2011 PBNDS (Section 6.4), 2019 National Detention Standards (Section 6.4), and the Family Residential Standards 2020 (Section 6.4) (evidencing that ERO's detention standards distinguish between EOIR LOP and legal rights group presenters for requirements and accommodations).

assist all parties in detained removal proceedings: detainees, the immigration courts, ICE, and detention facilities. The LOP is operated by EOIR contractors and orients noncitizens detained by ICE to the immigration court process and their rights, obligations, and legal options. Experience has shown that LOP attendees are positioned to make better-informed decisions, are more likely to obtain legal representation, and complete their cases faster than detainees who have not received the LOP.

The LOP is generally comprised of: (1) an interactive group orientation, which is open to general questions; (2) an individual orientation, in which unrepresented individuals can briefly discuss their cases with experienced legal service providers; (3) a self-help component, in which unrepresented individuals who wish to pursue their case, or who wish to voluntarily depart the U.S. or request removal, receive helpful legal materials and basic training on self-representation through group workshops; and (4) a referral process, in which individuals seeking relief are referred to pro bono counsel, where available.

The LOP is currently operating in approximately 45 ICE detention facilities. ERO Custody Management has posted the current list of these facilities with their corresponding LOP providers on the ERO Legal Access Resource Center.² This list will be updated as needed by EOIR.

Discussion:

FODs who have EOIR LOP contractors operating in facilities within their area of responsibility should note the below updated guidance in support of the EOIR LOP for detained noncitizens in ICE Detention Facilities.

Accommodations

FODs should ensure, to the greatest extent operationally feasible, the establishment of consistent times and adequate space for the EOIR LOP contractors to meet with detainees. FODs should appoint dedicated field office point(s) of contact (POC) to maintain productive working relationships and facilitate information sharing among ERO, detention facilities, and the EOIR LOP contractors. To better ensure confidentiality of individual detainee legal matters, detention facilities should provide a means by which LOP contractors can converse privately with detainees, as needed.

The LOP is designed and intended for live, in-person delivery of services. However, if an uncontrollable event, such as an infectious outbreak or natural disaster, prevents in-person services, FODs should ensure alternative means to schedule and provide remote LOP group orientations and individual orientations (see Technology section below) that are consistent with

² The list is posted on the ERO Legal Access Resource Center/Legal Service Providers page, available at:

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health and safety protocols.

Attendance

FODs should ensure detainee attendance at LOP group orientations to the greatest extent possible. To do so, ERO and/or facility providers should assist LOP contractors to identify all detained individuals eligible to attend an LOP. To promote attendance of eligible detained noncitizens, FODs are encouraged to allow LOP providers access to detainees to explain the purpose, scope, and availability of services through LOP, which can be done in person and/or through a video shown at intake and or in housing units (to accommodate those in special management units or who are otherwise cohorted). Eligible detainees³ include, but are not limited to, individuals who are: in removal proceedings, subject to expedited or reinstatement of removal, or who may be requesting non-refoulement or other stay of removal.

In the event that remote LOP services are the only option (see Technology section below), it is acknowledged that the number of individuals attending a group orientation may be limited due to health, safety, and security protocols. FODs should also take action to ensure that the greatest possible number of detainees have access to telephonic or video teleconferencing for individual orientations, or other remote services (such as showing of recorded videos and collecting attendance sheets).

Information Sharing

To ensure that all eligible and interested detainees are identified and have access to attend a LOP group orientation prior to their first appearance in court, FODs are authorized⁴ to and shall share information about detainees with EOIR and their LOP contractors, unless otherwise prohibited by law.⁵ To the extent operationally feasible and permitted by law, FODs shall provide LOP contractors with rosters of new arrivals and of all detainees currently in custody on a regular (e.g., daily or weekly) basis, which may include:

- Full names;
- A-Numbers;
- Place of birth and Countr(ies) of Citizenship;
- Book-in dates and time;

³ Similar to detention standards regarding Legal Rights Group Presentations, LOP presentations are open to all detainees, regardless of the presenter's intended audience, except when a particular detainee's attendance would pose a security risk.

⁴See [REDACTED] (b)(7)(E) [REDACTED]
2016, available at: <https://www.federalregister.gov/documents/2016/10/19/2016-25197/privacy-act-of-1974-department-of-homeland-security-united-states-immigration-customs-and>.

⁵ LOP providers are DOJ contractors with "a need to know" and are therefore permitted to receive disclosures of information from ICE and are exempt from disclosure prohibitions under 8 U.S.C. § 1367 (VAWA/U/T visas) and 8 C.F.R. § 208.6/8 C.F.R. § 1208.6 (asylum).

- Whether a detainee has been booked out or has been transferred;
- Type of immigration proceedings; and
- Housing locations (e.g., housing unit, pod, bunk information).

The FOD may impose limits on information sharing in the event a LOP provider discloses rosters or other aggregated information to non-LOP providers. Detainee-specific information may only be disclosed by an LOP provider to other non-LOP service providers when a detainee signs a release of information with the LOP provider.⁶

In furtherance of LOP coordination and information sharing, the FOD shall:

- Develop standard procedures for announcing the LOP presentations to detainees, and for facilitating movement of interested detainees within the facility to allow attendance;
- Ensure that the Field Office and facility staff are provided with information and/or training on the LOP;⁷
- Maintain a consistent ICE POC and a designated back-up POC for each facility to increase efficiencies;⁸ and
- Convene regular meetings.⁹ with the LOP provider and ICE staff to foster information sharing and to ensure issues are addressed in a timely manner.

Legal Documentation and Availability of LOP Materials

In accordance with relevant ICE detention standards, FODs shall ensure that facilities allow detainees to keep legal documents (e.g., Form I-862 – Notice to Appear, court information, etc.) with them so that the detainees may bring these to the LOP as well as to their immigration court hearings.

Additionally, FODs should ensure that LOP materials are consistently available in facility law libraries. Pursuant to requirements under the ICE detention standards to provide meaningful access to programs and activities for illiterate and limited English proficient (LEP) detainees, LOP materials are available in over 30 languages, including both written and auditory

⁶ EOIR LOP providers may document this through either Form EOIR-59 Certification and Release of Records. (Rev. Feb 2021), available at: <https://www.justice.gov/eoir/page/file/1380121/download> or the ICE Form 60-001 Privacy Waiver Authorizing Disclosure to a Third Party, available at: <https://www.ice.gov/forms>.

⁷ ERO Custody Programs Division will develop applicable training materials and assist with training as requested by field offices.

⁸ The FOD shall ensure that the ICE POC delegates their authority to another ICE officer in the event of a reassignment / change of duty station.

⁹ Meetings shall be no less than quarterly, however FODs should strive for monthly meetings with LOP providers.

formats.¹⁰ Although access to the law library may be reduced when following temporary health and safety protocols, FODs are encouraged to provide LOP materials through alternative computing devices in addition to law library computers. This ensures detainees have alternate means to access legal information and can prepare their cases on their own. Therefore, at facilities where tablets, kiosks, or other equivalent portable or desktop-alternative computing devices are available, FODs may, as practicable, ensure that LOP materials are also available on these devices.

Technology

EOIR LOP contractors are better able to assist detainees and provide the LOP when allowed to use technology in ICE detention facilities. Such access is also consistent with ICE detention standards, which require accommodations for detainees who are illiterate, LEP and/or who have a disability. Further, pursuant to Section 504 of the Rehabilitation Act of 1973, ICE ERO and its contractors are required to provide individuals with a disability equal access to all programs and services and primary consideration must be given to the *requested method of accommodation* (unless an equally effective method is available).¹¹ As such, FODs may allow the use of, or provide, appropriate laptop or other audio-visual equipment, internet, facsimile, and telephone access to EOIR and their LOP contractors to serve as auxiliary aids and means to accommodate such detainees (subject to ICE and facility policies, procedures, and availability). At minimum, FODs should ensure access to phone or video conferencing for multiple parties to facilitate the use of EOIR or LOP contractor-provided interpreters.¹²

Should health and safety protocols related to an uncontrollable event, such as an infectious outbreak or natural disaster, require interim remote LOP service provision, FODs should ensure that video-teleconference, teleconference, or other equivalent telephonic or video communication technology is available for use by LOP providers. Individual screenings or case consultations conducted over video or teleconference calls must provide privacy to maintain confidentiality. The use of video-teleconference and teleconferencing allows LOP contractors to communicate

¹⁰ All LOP materials are available for download at:

[REDACTED] or through the EOIR LOP contractor website: <https://www.vera.org/ITAC>.

¹¹ See 6 CFR § 15.60, implementing Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (Sept. 26, 1973), codified at 29 U.S.C. § 701 et seq. See also, the ICE ERO directive *Policy No. 11071.1: Assessment and Accommodations for Detainees with Disabilities*, available on the ERO Disability Accommodations Resource Center at: [REDACTED]

¹¹ See 6 CFR § 15.60, implementing Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (Sept. 26, 1973), codified at 29 U.S.C. § 701 et seq. See also, the ICE ERO directive *Policy No. 11071.1: Assessment and Accommodations for Detainees with Disabilities*, available on the ERO Disability Accommodations Resource Center at: [REDACTED]

¹² Pro bono attorneys are permitted to use three-way calling on the Detainee Telephone System (DTS) Pro Bono Platform solely for purposes of facilitating communication with co-counsel, connections to professional/certified interpreters or third-party interpretation services or accommodating individuals with disabilities in need of auxiliary aids and services. Please see the [DTS Pro Bono Platform Access Policy FAQ](#) for additional information.

more effectively with respondents and utilize interpretation assistance as needed.

For further information or assistance, contact ERO CMD at:

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ice.dhs.gov.

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