

April 17, 2018

**Congress of the United States**  
Washington, DC 20510

The Honorable Jeff Sessions  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Attorney General Sessions:

We write to express our profound objection to actions taken by the Department of Justice to undermine central elements of due process and fairness in our immigration system. By imposing numeric quotas upon immigration judges and now attempting to terminate the longstanding Legal Orientation Program (LOP), the Department is systematically deconstructing basic due process protections for immigrants. These measures raise constitutional concerns and stand in stark contrast to the American vision of a justice system for all.

As members of the Committees of jurisdiction over the Justice Department and both immigration and constitutional law, we remind you that the U.S. Supreme Court has firmly established that the Constitution guarantees basic due process for immigrants. The Court has ruled that the “Due Process Clause applies to all ‘persons’ within the United States, including aliens,” and that it is “not confined to the protection of citizens.”<sup>1</sup> The Court has further observed that “aliens who have once passed through our gates . . . may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.”<sup>2</sup>

Despite these constitutional protections, immigrants often face a starkly different reality than citizens.<sup>3</sup> Children, some as young as three years old, have been compelled to represent themselves before immigration judges because there is no government appointed counsel.<sup>4</sup> Immigrants who do not speak English are often forced to navigate the complexities of immigration law without the aid of a competent interpreter.<sup>5</sup> It is difficult to reconcile these unjust realities with the “traditional standards of fairness encompassed in due process” required by the Supreme Court.

And now, the Department seeks to *further* erode what little due process exists in our immigration courts. On January 17, 2018, the Department announced new “performance

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<sup>1</sup> *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001).

<sup>2</sup> *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

<sup>3</sup> Appleseed, *Assembly Line Injustice: Blueprint to Reform America’s Immigration Courts*, (May 2009) available at <http://appleseednetwork.org/wp-content/uploads/2012/05/Assembly-Line-Injustice-Blueprint-to-Reform-Americas-Immigration-Courts1.pdf>.

<sup>4</sup> Jerry Markon, *Can a 3-year old represent herself in immigration court? This judge thinks so*, WASHINGTON POST, (Mar. 5, 2016), available at [https://www.washingtonpost.com/world/national-security/can-a-3-year-old-represent-herself-in-immigration-court-this-judge-thinks-so/2016/03/03/5be59a32-db25-11e5-925f-1d10062cc82d\\_story.html?utm\\_term=.dc2586821fe6](https://www.washingtonpost.com/world/national-security/can-a-3-year-old-represent-herself-in-immigration-court-this-judge-thinks-so/2016/03/03/5be59a32-db25-11e5-925f-1d10062cc82d_story.html?utm_term=.dc2586821fe6).

<sup>5</sup> Laura Abel, *Language Access in Immigration Courts*, BRENNAN CENTER FOR JUSTICE, p. 1 (2011), available at [https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language\\_Access\\_in\\_Immigration\\_Courts.pdf](https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf).

metrics” imposing numeric quotas upon immigration judges. Immigration judges will now be expected to complete 700 cases a year with a less than 15 percent remand rate in order to receive a “satisfactory” performance rating from the Department.<sup>6</sup> But immigration judges – like their peers in other court systems – must not be asked to sacrifice thoroughness and reasoned judgment in favor of speed. Immigration judges must possess sufficient discretion, independence, and information to fairly rule on each legal and factual question before them. This is particularly true because immigration judges are often presiding over cases that have life-and-death consequences. Assembly line justice is no justice at all.

Forcing judges to choose between job security and thoroughness is a direct threat to due process. It is bad policy, and it is not a choice that any judge should have to make. Inevitably, immigrants appearing in court will legitimately question whether the immigration judge’s decisions are driven by the merits of their arguments or the need to quickly process cases. This will only lead to more appeals, clogged circuit courts, longer detention stays, and more backlogs – undermining the purported efficiency-based rationale for implementing these quotas in the first place.

To make matters worse, reports indicate that the Department intends to pause and possibly terminate the LOP and the Immigration Court Helpdesk (ICH) program.<sup>7</sup> These programs connect immigrants with legal services organizations that provide them with basic information about their legal rights and the court process. In 2016 alone, LOP attorneys and paralegals assisted more than 60,000 detained individuals in 38 detention facilities across the country. While the Department claims that the LOP must be paused to assess the cost-effectiveness of the program, its own study in 2012 found that the LOP *saved* the government nearly \$18 million over a three year period.<sup>8</sup> This Department study demonstrates that our immigration system operates more efficiently when immigrants, who have no government appointed counsel, are provided with basic information about the court process and their rights.

The Trump administration’s Immigration and Customs Enforcement (ICE) agrees. An internal ICE memo from November 2017 regarding the LOP states, “[e]xperience has shown that LOP attendees are positioned to . . . complete their cases faster than detainees who have not received LOP.”<sup>9</sup> Thus, the Department’s claim that the LOP must be paused to assess its cost effectiveness appears merely to be a smokescreen masking an attempt to strip immigrants of access to information about their rights.

The Department’s decision to pause the LOP contradicts clear and unambiguous Congressional intent. The FY 2018 Omnibus – which Congress passed and the President signed

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<sup>6</sup> EOIR Performance Plan, available at <https://cdn.cnn.com/cnn/2018/images/04/02/immigration-judges-memo.pdf>.

<sup>7</sup> Maria Sacchetti, *Justice Dept. to halt legal-advice program for immigrants in detention*, WASHINGTON POST, (Apr. 10, 2018), available at [https://www.washingtonpost.com/local/immigration/justice-dept-to-halt-legal-advice-program-for-immigrants-in-detention/2018/04/10/40b668aa-3cfc-11e8-974f-aacd97698cef\\_story.html?utm\\_term=.55999793bf49](https://www.washingtonpost.com/local/immigration/justice-dept-to-halt-legal-advice-program-for-immigrants-in-detention/2018/04/10/40b668aa-3cfc-11e8-974f-aacd97698cef_story.html?utm_term=.55999793bf49).

<sup>8</sup> Cost Savings Analysis –The EOIR Legal Orientation Program, DEPARTMENT OF JUSTICE, (April 4, 2012), available at [https://www.justice.gov/sites/default/files/eoir/legacy/2013/03/14/LOP\\_Cost\\_Savings\\_Analysis\\_4-04-12.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2013/03/14/LOP_Cost_Savings_Analysis_4-04-12.pdf).

<sup>9</sup> See Attachment 1, Memorandum from Tae Johnson, ICE ERO Assistant Director for Custody Management, to Field Office Directors (Nov. 30, 2017).

into law – contains language explicitly instructing the Department to provide funds to “sustai[n] the current legal orientation program.”<sup>10</sup> The legislation also contains language noting the need for *expanded* LOP services in remote areas.<sup>11</sup> By deciding instead to temporarily halt the program, the Department is ignoring the will of Congress.


We strongly condemn these recent decisions to undermine the integrity of our immigration system. The Department of Justice exists as a guardian of the rule of law. That necessarily entails protecting the due process rights of citizens and non-citizens alike. We believe the measures described above undermine the most basic notions of fairness in the American justice system, and thus the rule of law itself. We urge you to reject these ill-advised policy changes.

Sincerely,

  
Patrick Leahy  
United States Senator

  
Jerrold Nadler  
United States Representative

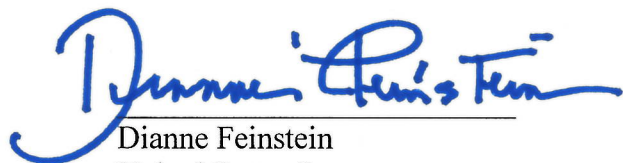
  
Richard J. Durbin  
United States Senator

  
Zoe Lofgren  
United States Representative

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<sup>10</sup> H. Rept. 115-231, Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2019, p. 30, *available at* <https://www.congress.gov/115/crpt/hrpt231/CRPT-115hrpt231.pdf>.

<sup>11</sup> S. Rept. 115-139, Departments of Commerce and Justice, Science, and Related Agencies Appropriations Bill, 2018, p. 65, *available at* <https://www.congress.gov/115/crpt/srpt139/CRPT-115srpt139.pdf>.



Dianne Feinstein

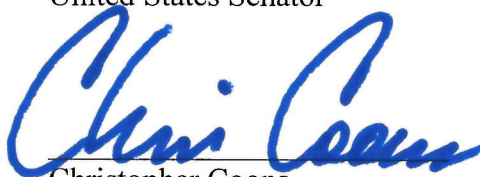
United States Senator



Sheldon Whitehouse  
United States Senator



Amy Klobuchar  
United States Senator



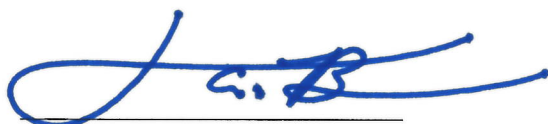
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United States Senator



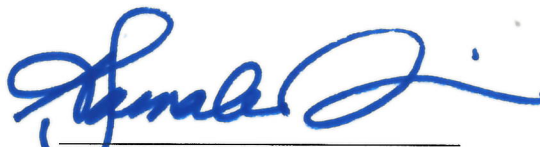
Richard Blumenthal  
United States Senator



Mazie Hirono  
United States Senator



Cory A. Booker  
United States Senator



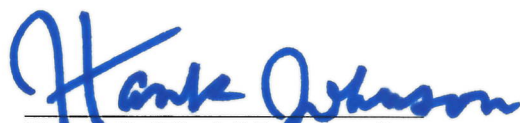
Kamala D. Harris  
United States Senator



Sheila Jackson Lee  
United States Representative



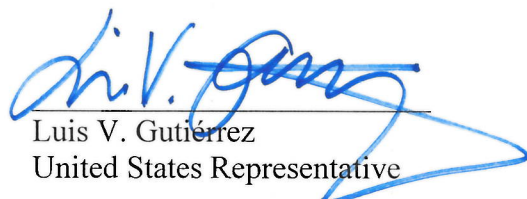
Steve Cohen  
United States Representative



Henry C. "Hank" Johnson, Jr.  
United States Representative



Theodore E. Deutch  
United States Representative

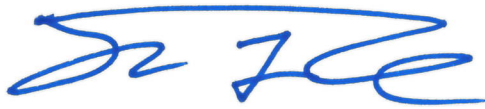


Luis V. Gutiérrez  
United States Representative



Karen Bass  
United States Representative

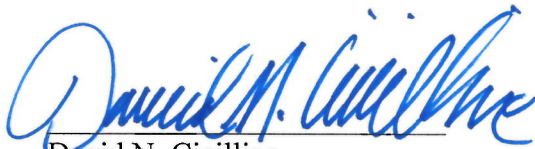




Cedric L. Richmond  
United States Representative



Hakeem Jeffries  
United States Representative



David N. Cicilline  
United States Representative



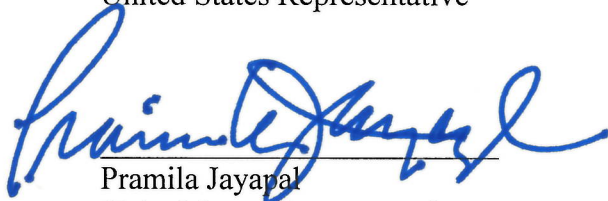
Eric Swalwell  
United States Representative



Ted W. Lieu  
United States Representative



Jamie Raskin  
United States Representative



Pramila Jayapal  
United States Representative



Bradley S. Schneider  
United States Representative




Val Butler Demings  
United States Representative



U.S. Immigration  
and Customs  
Enforcement

November 30, 2017

MEMORANDUM FOR: Field Office Directors

FROM: Tae Johnson   
Assistant Director for Custody Management

SUBJECT: Updated Guidance: ERO Support of the U.S. Department of Justice Executive Office for Immigration Review Legal Orientation Program

Purpose:

This memorandum provides updated guidance to Enforcement and Removal Operations (ERO) Field Office Directors (FODs), Deputy Field Office Directors (DFODs), and Assistant Field Office Directors (AFODs) on best practices in support of the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) Legal Orientation Program (LOP).

This memorandum updates the previous memorandum *ERO Support of the Department of Justice's Executive Office for Immigration Review Legal Orientation Program*, issued on April 23, 2013, and provides an updated list of the 37 ICE facilities in which an LOP currently operates. *See Attachment A.*

Background:

For over 17 years, the DOJ EOIR Office of Legal Access Programs (OLAP) 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 assist all parties in detained removal proceedings: detained aliens; the immigration courts; ICE; and detention facilities. The LOP is run by EOIR contractors, and orients ICE detainees to the immigration court process, their obligations, and their 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 37 ICE detention facilities. A list of those facilities is attached. *See* Attachment A. In addition, EOIR periodically updates this list in response to changes in detention populations and availability of resources.

#### Discussion:

FODs who have EOIR LOP contractors operating in facilities within their area of responsibility (AOR) should note the updated best practices outlined below.

#### ***Accommodations***

FODs are encouraged to establish consistent times and adequate space for the EOIR LOP contractors to meet with detainees. FODs should appoint dedicated field office point(s) of contact 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/representatives can converse privately with detainees, if needed.

#### ***Information Sharing***

FODs are authorized<sup>1</sup> and encouraged to share information about detainees with EOIR and their LOP contractors. FODs should also provide EOIR contractors new arrival and full population rosters to the LOP contractors on a regular (i.e., daily or weekly) basis, which may include:

- Detainee names;
- A-Numbers;
- Country of birth;
- Book-in dates;
- Types of immigration proceeding; and
- Housing locations, if necessary.

Eligible detainees include all detainees in EOIR proceedings; detainees who may be placed in EOIR proceedings; and detainees in other immigration proceedings, depending on available LOP resources.

The Field Office should also:

- Develop standard procedures for announcing the LOP presentations to detainees, and for facilitating movement of interested detainees within the facility to allow attendance.

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<sup>1</sup> Privacy Act of 1974; Department of Homeland Security United States Immigration and Customs Enforcement – 011 Criminal Arrest Records and Immigration Enforcement (CARIER) System of Records, Oct. 19, 2016.

- Provide information and/or training to Field Office and facility staff on the LOP; and
- Maintain a consistent point of contact at each facility to increase efficiencies.

***Legal Documentation and Availability of LOP Materials***

FODs shall ensure facilities allow detainees to keep legal documents (e.g., NTAs, court information, etc.) with them, in accordance with relevant ICE detention standards, 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 facilities' law libraries.

***Technology***

EOIR LOP contractors are better able to assist detainees and provide the LOP when allowed to use technology in ICE detention facilities. Subject to ICE and facility policy and procedures, FODs may provide appropriate laptop, internet, and telephone access to EOIR and their LOP contractors.

For further information, contact ERO CMD at [detention.legalaccess@ice.dhs.gov](mailto:detention.legalaccess@ice.dhs.gov).

**Attachments:**

- A. ICE Facilities with EOIR LOP Contractors



**ATTACHMENT A**  
**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**  
**FACILITIES WITH LEGAL ORIENTATION PROGRAM CONTRACTORS**

<b>ICE Facilities with EOIR LOP Contractors</b>					
	<b>Name</b>	<b>City</b>	<b>State</b>	<b>AOR</b>	<b>Type</b>
1	Adelanto Correctional Facility	Adelanto	CA	LOS	DIGSA
2	Central Arizona Florence Correctional Complex	Florence	AZ	PHO	USMS IGA
3	Eloy Federal Contract Facility	Eloy	AZ	PHO	DIGSA
4	Florence Service Processing Center	Florence	AZ	PHO	SPC
5	El Paso Service Processing Center	El Paso	TX	ELP	SPC
6	Otero County Processing Center	Chaparral	NM	ELP	DIGSA
7	West Texas Detention Facility	Sierra Blanca	TX	ELP	USMS IGA
8	Northwest Detention Center	Tacoma	WA	SEA	CDF
9	Houston Contract Detention Facility	Houston	TX	HOU	CDF
10	Joe Corley Detention Facility	Conroe	TX	HOU	IGSA
11	IAH Secure Adult Detention Facility	South	TX	HOU	IGSA
12	Prairieland Detention Center	Alvarado	TX	DAL	IGSA
13	Denver Contract Detention Facility	Aurora	CO	DEN	CDF
14	Kenosha County Detention Center	Kenosha	WI	CHI	USMS IGA
15	McHenry County Jail	Woodstock	IL	CHI	USMS IGA
16	York County Prison	York	PA	PHI	IGSA
17	Berks County Family Shelter	Leesport	PA	PHI	Family
18	Karnes County Residential Center	Karnes City	TX	SNA	USMS IGA
19	South Texas Detention Center	Pearsall	TX	SNA	CDF
20	South Texas Family Residential Center	Dilley	TX	SNA	IGSA
21	Elizabeth Detention Center	Elizabeth	NJ	NEW	CDF
22	Essex County Jail	Newark	NJ	NEW	IGSA
23	Hudson County Jail	Kearney	NJ	NEW	IGSA
24	East Hidalgo Detention Center	La Villa	TX	SNA	USMS IGA
25	Port Isabel Service Processing Center	Los Fresnos	TX	SNA	SPC
26	San Diego Contract Detention Facility - Otay	San Diego	CA	SND	CDF
27	LaSalle Processing Center	Jena	LA	NOL	IGSA
28	Pine Prairie Processing Center	Pine Prairie	LA	NOL	IGSA
29	Stewart Detention Center	Lumpkin	GA	ATL	DIGSA
30	Irwin County Detention Center	Ocilla	GA	ATL	USMS IGA
31	Broward County Transitional Center	Pompano	FL	MIA	CDF
32	Krome North Service Processing Center	Miami	FL	MIA	SPC
33	Frederick County Adult Detention Center	Frederick	MD	BAL	IGSA
34	Howard County Detention Center	Jessup	MD	BAL	IGSA
35	Worcester County Jail	Snow Hill	MD	BAL	IGSA
36	Immigration Centers of America Farmville	Farmville	VA	WAS	DIGSA
37	Virginia Peninsula Regional Jail	Williamsburg	VA	WAS	USMS IGA