

STUDY ON ASYLUM SEEKERS IN EXPEDITED REMOVAL
As Authorized by Section 605 of the International Religious Freedom Act of 1998

**LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EXPEDITED
REMOVAL: A SURVEY OF ALTERNATIVE PRACTICES**

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Charles H. Kuck

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LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EXPEDITED REMOVAL: A SURVEY OF ALTERNATIVE PRACTICES

By Charles H. Kuck

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), which took effect April 1, 1997, created the Expedited Removal process. Congress established Expedited Removal to address the perception that the asylum system was vulnerable to abuse by individuals arriving at ports of entry with false or no documents.¹ The Expedited Removal process, one of the major immigration reform measures included in IIRAIRA, constitutes a significant departure from prior law. It is a process that limits the rights of non-citizens at ports of entry and increases the authority of Department of Homeland Security (DHS) inspectors and Asylum Officers, who are now authorized to issue orders of removal which are not subject to appeal or other external review. Prior to the creation of Expedited Removal, orders of removal were issued only by immigration judges and were subject to administrative and judicial review. On November 13, 2002, Attorney General Ashcroft extended Expedited Removal beyond ports of entry to undocumented non-Cuban aliens who, within two years prior to apprehension, entered the United States by sea.² On August 11, 2004, the Secretary of Homeland Security expanded Expedited Removal authority to Border Patrol agents who apprehend aliens within 100 miles of the border within 14 days after an entry without inspection.³

The International Religious Freedom Act of 1998 (IRFA) authorized the United States Commission on International Religious Freedom (USCIRF) to appoint experts to conduct a study to answer four questions relating to the impact of Expedited Removal on asylum claims.⁴ Specifically, the Study is to determine whether immigration officers performing duties under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) (INA), with respect to aliens who may be eligible to be granted asylum, are engaging in any of the following conduct:

- A) Improperly encouraging such aliens to withdraw their applications for admission.
- (B) Incorrectly failing to refer such aliens for an interview by an asylum officer for a determination of whether they have a credible fear of persecution (within the meaning of section 235(b)(1)(B)(v) of such Act).
- (C) Incorrectly removing such aliens to a country where they may be persecuted.
- (D) Detaining such aliens improperly or in inappropriate conditions.

¹ See, e.g., Cooper, "Procedures for Expedited Removal and Asylum Screening Under [IIRAIRA]," 29 Conn. L. Rev. 1501, 1501-02 (1997).

² Notice Designating Aliens subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act Notice, 67 FR 68924 (November 13, 2002).

³ Notice Designating Aliens for Expedited Removal, 69 FR 48877 (August 11, 2004).

⁴ H.R. 2431, P.L.105-292 Sec. 605 of the International Religious Freedom Act of 1998 authorized the U.S. Commission on International Religious Freedom (USCIRF) to appoint experts to study the effects of Expedited Removal on asylum seekers, and specified four questions that such a study should address. Pursuant to this authority, USCIRF appointed Charles Kuck, Esq as the lead expert for exploring legal representation issues.

This report addresses legal representation for asylum seekers in the Expedited Removal process, as it relates to the third and fourth study questions; namely, whether barriers to representation, particularly those faced by detained aliens in Expedited Removal, may result in the incorrect removal of asylum seekers to countries where they may be persecuted, and whether conditions of detention may create unnecessary or inappropriate barriers to representation. This report also explores various approaches currently employed to meet the need for legal assistance by such aliens, supported by both the government and the private sector.

I. OVERVIEW OF ENTRY PROCESS

Upon entry to the United States, an “arriving alien”⁵ is subject to “inspection” by an officer of the DHS Bureau of Customs and Border Protection (“CBP”). The inspecting officer is required to make a review of the person’s entry documents in primary inspection and determine whether or not the person is admissible to the United States, using as the standard, the legal inadmissibility requirements found in 8 U.S.C. § 1182, et. seq. If the primary inspecting officer is not convinced of the arriving alien’s admissibility, or if the arriving alien appears inadmissible, the alien is referred to secondary inspection. In the secondary inspection, a CBP officer will examine the arriving alien and his documents. If the CBP officer determines the alien lacks authentic or appropriate travel documents, he will initiate the Expedited Removal process described in 8 U.S.C. §1225. As part of the Expedited Removal process, the CBP officer is required to ask the arriving alien a series of questions, which are designed to ascertain whether the arriving alien has a fear of immediate return to the home country.⁶

An arriving alien without proper documents is subject to being “expeditiously removed” unless he or she demonstrates a “credible fear” of return to his or her home country. Thus, an alien expressing a fear of return to the immigration inspector must be referred to an asylum officer, who then determines whether that fear is “credible.” Credible fear is defined by statute as a “significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum”⁷

Understanding the prior “exclusion” process is essential to understanding the changes made by Expedited Removal. The charts accompanying this text show the basic procedures involved in the exclusion process.⁸ Prior to 1997, all aliens who were deemed inadmissible to the United States at the time of their application for entry had the opportunity to appear before an immigration judge to challenge the finding of inadmissibility or, in the alternative, to accept an offer made at the discretion of the immigration inspector to withdraw his application for

⁵ 8 CFR 1.1(q) (2004), defined an arriving alien as someone who is requesting admission to the United States at either a land, sea or air port of entry.

⁶ See Form I-867B (attached as Appendix A); See also *A-file and Record of Proceeding Analysis of Expedited Removal*, Jastram & Hartsough, Feb. 2005; *Evaluation of Credible Fear Referral in Expedited Removal at Port of Entry in United States*, Keller et al. Feb. 2005.

⁷ 8 U.S.C. §1225(b)(1)(B)(v), Immigration & Nationality Act (“INA”); §235(b)(1)(B)(v).

⁸ See *The Asylum Application Process for Exclusion Proceedings Used before April 1, 1997*, prepared by Charles Kuck & Susan Kyle (Feb. 2005). (Attached as Appendix F).

admission.⁹ For those aliens who sought to challenge their exclusion by the Immigration Inspector, the Legacy INS had the authority to detain them until their hearing, but often released these aliens after issuing them a Form I-122, (“Notice to Applicant for Admission Detained for Hearing Before Immigration Judge”). The immigration judge was authorized to admit aliens whom he or she determined were actually admissible to the United States, and to hear arriving aliens’ claims for asylum.

Prior to the advent of Expedited Removal, inspectors were not required to ask the alien about a fear of return. They also did not, however, have the authority to remove the alien, but only to offer withdrawal or refer him or her directly to the immigration judge, where (s)he could apply for asylum.

At the exclusion hearing before an immigration judge, the alien was entitled to representation (at his or her own expense) in the presentation of his request for admission and in his request for asylum. These exclusion proceedings were recorded for transcription purposes and the parties had the opportunity to appeal the determination to the Board of Immigration Appeals (“BIA”).¹⁰

After the 1993 bombing of the World Trade Center, however, questions were raised about whether immigration inspectors could protect our borders if they were not authorized to turn away improperly documented aliens. There were also concerns that, due to a shortage of detention capacity as well as Immigration Judge backlogs, detaining the alien until his or her hearing was often not a viable option. Under these circumstances, there was growing concern that terrorists and other aliens without valid identity documents could exploit the system to enter and disappear into the United States. Human rights advocates, however, argued that bona fide asylum seekers are often forced to flee without proper documents. They asserted that authorizing Immigration Inspectors to summarily remove arriving aliens would result in the refoulement (i.e. return) of *bona fide* asylum seekers to countries where they may face persecution.¹¹

As shown in the attached chart of the Expedited Removal entry process, there were substantial changes made by Congress in an effort to address all of these concerns. See Chart 2. Under the current Expedited Removal process, arriving aliens whom CBP determines lack the appropriate travel documents are processed for immediate removal, e.g. departing on the next available flight to their country of origin. The CBP Inspectors are authorized to offer a withdrawal of entry to the arriving alien, but the alien himself can not make such a request.¹² Prior to finalizing the Expedited Removal order, the CBP Inspector must ask a series of questions¹³ that are designed to ascertain whether the alien has a fear of return to his/her home

⁹ Accepting a withdrawal of an application for admission was a longstanding discretionary practice of INS, though this practice was not codified until 1996. *See* 8 U.S.C. §1225(a)(4), INA §235(a)(4).

¹⁰ *Id.*

¹¹ For a detailed account of the public policy debate surrounding asylum reform and IIRIRA, *see* Phillip Schrag, *A Well-Founded Fear: The Congressional Battle to Save Political Asylum in America*, Routledge (2000).

¹² *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208.

¹³ *See* Form I-867B (attached as Appendix A); *see also* *Evaluation of Credible Fear Referral in Expedited Removal at Port of Entry in United States*, Keller et. al., Feb. 2005. and *A-file and Record of Proceeding Analysis of Expedited Removal*, Jastram et. al. Feb. 2005. for an explanation and analysis of the Four Questions.

country. Arriving Aliens who are found to have a fear of return are then placed in a detention facility, where they will wait, for 48 hours or more, for a credible fear interview with a DHS U.S. Citizenship and Immigrations Services (“USCIS”) Asylum Officer.

The alien may neither contact nor be represented by an attorney or other representative before or during the Expedited Removal process at the port of entry. If the inspector refers the alien for a credible fear determination, the alien may contact an attorney or representative during the minimum 48 hour period between the inspection process at the port of entry (“POE”) and the credible fear interview. The alien must do so, however from the facility where he has been placed in mandatory detention. During the credible fear interview, the alien may not be “represented” by counsel, though an attorney or representative may observe the interview.

While a “record” of the questioning by the CBP Inspector is maintained in the alien’s file, the questioning is not typically taped or independently transcribed.¹⁴ Nor, at ports of entry, may the applicant’s attorney “witness” the interview (though counsel may be present at the Credible Fear Interview). Rather, the interview is memorialized by the interviewing officer him or herself, who types a record of the conversation using the Form I-867A and B or I-870.¹⁵ While the regulations require that the accuracy of the sworn statement taken at the port of entry be ensured by “having the alien read (or have read to him or her) the statement, and the alien shall sign and initial each page of the statement and each correction,”¹⁶ our Study found that nearly 72 percent of the time the alien neither read the statement, nor was the statement read back to him or her.¹⁷ Our Study found, further, that INS trial attorneys use these statements to impeach the applicant’s testimony in 48 percent of the cases reviewed, and that the port of entry statement was cited by the Immigration Judge in his decision to deny the application nearly 32 percent of the time.¹⁸

¹⁴ See e-mail message from Linda M. Loveless (CBP) to Mark Hetfield (USCIRF), Dec 4, 2003 (stating that the CBP Offices at the Atlanta, Las Vegas and Houston Airport Ports of Entry have a videotape system in place, ostensibly to monitor the performance of CBP Inspectors during the interview process. However the videotapes used during these interviews are typically taped over after approximately 60-90 days, and are usually not available to either the alien or the government at a subsequent hearing. Secondary inspections are also videotaped at three land ports of entry: Oroville in Washington State and Peace Bridge and Champlain in New York State. In Oroville tapes are retained for only 30 days, in the other two sites they are kept for approximately six months).

¹⁵ See sample, attached as Exhibit A; See also *Evaluation of Credible Fear Referral in Expedited Removal at Port of Entry in United States*, Keller et. al., Feb. 2005 (contending that while Form I-867A and B purports to be certified by the alien as being a “full true and correct” record of the interrogation during the secondary inspection process, the component of this Study which involved the monitoring of ports found issues relating to the reliability of the document); see also CBP Response to Recommendations of UNHCR Study on U.S. Expedited Removal, issued 10/23/2003, Section A-7(2) (stating that in the past, CBP has rejected proposals that the form include warnings that it is not a verbatim transcript, noting that “trial attorneys or judges may determine the appropriate weight to be given to such statements in subsequent proceedings”); but see Form I-870 (Attached as Appendix B), (showing that the I-870 was revised on November 21, 2003 to state the following caveat: “The following notes are not a verbatim transcript of this interview. These notes are recorded to assist the individual officer in reviewing the determination. There may be areas of the individual’s claim that were not explored or documented for purposes of this threshold screening”).

¹⁶ 8 CFR 235.3(b)(2)(i) (2004).

¹⁷ See Keller, et al.

¹⁸ See Jastram, et al.

II. REPRESENTATION OF ARRIVING ALIENS AND ASYLUM SEEKERS

A. Introduction

Prior to the enactment of IIRAIRA, aliens who were denied admission into the United States were afforded a full hearing with the right to counsel, the right to present evidence, and to question witnesses on the record before an Immigration Judge pursuant to former section INA § 240.¹⁹ Before the implementation of IIRIRA, aliens had access to legal counsel prior to the removal (exclusion) hearing. IIRIRA did not include any provisions which specifically limited an asylum seeker's right to an attorney; nonetheless, Expedited Removal has had the effect of significantly restricting an alien's right to counsel. This is because of DHS's increased detention of asylum seekers in the Expedited Removal context. The changes to INA §240 (renumbered now to INA §235) have authorized secondary inspectors and their supervisors to make removal decisions previously made only by Immigration Judges, and before an alien is permitted to contact legal counsel.

While an alien/asylum-seeker may consult with persons of his choice prior to the credible fear interview, there is no right to "representation," nor does the alien have the right to have counsel present at the immigration judge's review of the negative credible fear determination.²⁰ Not until after the alien/asylum-seeker is found to have a credible fear of persecution or torture (after a credible fear interview), may an attorney fully represent him or her at an asylum hearing before an immigration judge.²¹ While an alien/asylum seeker will not have access to counsel at the primary or secondary inspection process, or likely not even at the credible fear determination, the alien is asked to sign legal documents which will have a bearing on a subsequent claim for asylum. As discussed earlier, these documents are frequently used as a sort of "record of proceedings" by DHS Immigration and Customs Enforcement (ICE) attorneys and Immigration Judges.²²

¹⁹ 8 U.S.C. §1225, Immigration & Nationality Act.

²⁰ INA § 235(b)(1)(B)(iv); 8 C.F.R. § 208.30(d)(4). See Executive Office for Immigration Review, Interim Operating Policy and Procedure Memorandum 97-3: Procedures for Credible Fear and Claimed Status Reviews, at 4 (Mar. 25, 1997) (proclaiming that immigration judges have the discretion as to whether consultants may be present at this review. If counsel is allowed to be present, nothing entitles him or her to make an opening statement, call and question witnesses, cross examine, object to written evidence, or make a closing argument); *but see* Expedited Removal Training Materials, page 4 (explaining that aliens in secondary (inspection) are not entitled to representation and do not have the right to an attorney, unless criminal proceedings are contemplated, nor are aliens entitled to contact family, friends, or others in the United States, concerning their situation. However, in some cases, it may be beneficial to permit such communication if it may assist in the case or allay concerns").

²¹ See Section II, Inspector Field Manual (2003)2.9 Dealing with Attorneys and Other Representatives (asserting that no applicant for admission, either during primary or secondary inspection has a right to be represented by an attorney - unless the applicant has become the focus of a criminal investigation and has been taken into custody. An attorney who attempts to impede in any way on your inspection should be courteously advised of this regulation. This does not preclude you, as an inspecting officer, to permit a relative, friend, or representative access to the inspectional area to provide assistance when the situation warrants such action). A more comprehensive treatment of this topic is contained in the Adjudicator's Field Manual, Chapter 12, and 8 CFR 292.5(b). The alien's right to counsel is a statutory right, 8 USC §1362, Immigration and Nationality Act §292.

²² See Jastram, et al.; Keller et al.

B. The Impact of Representation on Asylum Claims in Expedited Removal

Asylum seekers in Expedited Removal who have legal counsel tend to be much more successful in applying for asylum than those who proceed without an attorney. Of those individuals found to have a credible fear, who were subsequently represented by counsel, 25 percent were granted asylum by an Immigration Judge;²³ whereas, only 2 percent of those not represented by counsel were granted asylum.²⁴ One could argue that these statistical differences are attributable to attorneys representing only those applicants with the most meritorious cases. The statistics, however, also indicate that success rates of unrepresented asylum seekers are only marginally higher in areas with the lowest rates of legal representation than for those in areas with the highest rates of representation.²⁵ Immigration courts with the highest rates of representation tend to be in major metropolitan areas. Those with the lowest rates of representation tend to be courts, predominantly located within the detention centers themselves, in more rural areas. It therefore seems that the ability of an alien to obtain counsel is more closely associated with geographic location than with the merits of the asylum claim. Obviously, being represented by counsel appears to play a role in the ultimate decision on asylum.

The key difference between the affirmative asylum process and Expedited Removal is found in the latter's adversarial nature.²⁶ An alien who is already in the United States may apply for asylum affirmatively and undergo a non-adversarial "interview" with an asylum officer, bring an attorney with him, and provide his own interpreter. In contrast, an asylum seeker in Expedited Removal proceedings must first pass through his initial interview at the port of entry, typically after a long journey. (S)he must then engage in a credible fear interview after being given 48 hours or so to adjust to his new surroundings in a jail-like detention facility, and identify a person of his choosing with whom to "consult."²⁷ Then, if successful in obtaining a credible fear finding, the alien must claim asylum in court, where he is opposed by a DHS Trial Attorney who is generally there to argue the DHS position that the applicant should be removed from the United States.²⁸ It is only at this late stage where the applicant may be represented by counsel. Unlike a non-adversarial affirmative asylum proceeding, each asylum seeker subject to Expedited Removal needs to argue the merits of his case before an immigration judge and against a DHS "trial attorney." Consequently, it should be noted that unrepresented asylum seekers in affirmative proceedings are granted asylum 24 percent of the time, in contrast to the 2 percent grant rate of unrepresented asylum seekers who are referred to adversarial proceedings after being placed in Expedited Removal.²⁹

Detained asylum seekers who are not conversant in English may have difficulty finding legal counsel, even more difficulty conducting legal research and representing themselves in immigration court. Moreover, for "security reasons" commonly cited by prisons, no detention

²³ *Statistical Report on Immigration Court Proceedings, FY 2000-2004*, Kyle, Fleming, and Scheuren, (Feb. 2005), tables 3-2 to 3-12.

²⁴ See id.

²⁵ See id.

²⁶ See id. at table V;(reporting an acceptance rate for Expedited Removal of 25 percent for represented aliens and 2 percent for unrepresented aliens, table P&Q).

²⁷ See 8 CFR 235.3(b)(4)(ii) (2004).

²⁸ *Supra note 12*.

²⁹ Appendix C.

facility provides aliens with internet access to conduct research to document their asylum claims.³⁰ While the DHS detention standards have an extensive list of legal reference materials which should be maintained in the law libraries of detention centers, visits by the U.S. Commission on International Religious Freedom Expedited Removal Study (“USCIRF Study”) experts consistently found that many of the materials on the list were not in the law libraries, and that, when present, they were years out of date.³¹

All of these factors clearly affect the ability of the alien to effectively present an asylum claim and make the Immigration Judge’s task particularly difficult, putting additional strains on court time and resources. As EOIR stated after reviewing earlier drafts of this report:

All judges prefer represented to non-represented cases. Non-represented cases are more difficult to conduct. They require far more effort on the part of the judge. Judges struggle with the alien’s difficulties in completing the I-589 (Application for Asylum) in a language they may not be familiar with. The skeletal information provided by the alien must be expanded on by the judge, while maintaining impartiality...³²

As noted in regulations controlling the Immigration Court process, every alien is entitled to legal representation of his or her own choosing, however, they have no right to legal counsel paid for by the government.³³ While waiting for (and often following) a credible fear interview, asylum seekers are detained in one of the 185 or so different jails or detention facilities currently operated or under contract with the DHS.³⁴ Moreover, as noted in the Report on Condition of Confinement at Detention Facilities,³⁵ many of the custodial immigration facilities for these asylum seekers are located in rural parts of the United States, where few lawyers visit and even fewer maintain a practice.³⁶ In this report, we did not examine, nor do we allege, that DHS is in violation with its detention standards with regard to access to legal counsel. The practical effect of detention in remote locations, however, is to restrict asylum seekers’ legally authorized right to counsel.

C. Approaches to Representation of Detained Asylum Seekers

There have been various piecemeal approaches to solving the problem of unrepresented asylum seekers detained by ICE during the removal process. The general approach, however, is market-based. Asylum-seekers’ ability to retain counsel – paid or pro bono – is generally dependent on the availability of legal services in the geographic areas where they are detained.

³⁰ See Haney, *Conditions of Confinement for Detained Asylum Seekers Subject to Expedited Removal*, (Feb. 2005).

³¹ Human rights reference materials, while included in the DHS Detention Standards and critical to any asylum claim, were either missing or years out-of-date in every facility visited. In some facilities, a Lexis CD-ROM took the place of the law library, but the CD did not contain the human rights materials listed in the Detention Standards, nor did any of the facilities offer instruction to detainees on the use of the Lexis CD-ROM. See Appendix G, *Law Library and Related Resources* (listing of materials from the DHS Detention Standards).

³² Letter to Mark Hetfield, USCIRF, from Marta Rothwarf, Associate General Counsel, Executive Office for Immigration Review (EOIR), January 19, 2005.

³³ 8 C.F.R. § 1003.16(b).

³⁴ *Supra note 12*.

³⁵ See, Haney.

³⁶ Fleming and Scheuren, *Statistical Report on Detention, FY 2000-2003*, (Feb. 2005).

Many of the 185 detention facilities are located in rural areas without access to counsel of any kind³⁷, let alone attorneys trained in and experienced with asylum cases, and most detention facilities do not provide ready access to communication with outside counsel.³⁸ Consequently, many detained asylum seekers are left unrepresented at their merits hearing.³⁹

As noted previously, an unrepresented asylum seeker in the Expedited Removal process has only a 2 percent likelihood of being granted asylum, versus 25 percent chance for asylum seekers with attorneys. In contrast, 26 percent of unrepresented asylum seekers outside of Expedited Removal - who apply through the non-adversarial affirmative process - are granted asylum.⁴⁰ Consequently, it appears that an asylum seeker in Expedited Removal without representation is vulnerable to being incorrectly removed to a country where he or she may be persecuted. This vulnerability appears to be greater for those asylum seekers who are detained.

D. Legal Representation Models

Recognizing the problems with asylum seekers trying to navigate this adversarial process unassisted, several organizations, together with the Executive Office for Immigration Review (EOIR) and ICE, have made efforts to increase and facilitate representation, or at least legal orientation and counseling, of detained asylum seekers.⁴¹ A number of these programs, representing different models for securing legal assistance, are described below. All have the potential, if more broadly applied, to help ensure that the Expedited Removal process will not cause *bona fide* asylum seekers to be returned incorrectly to their persecutors.

Some of these models apply exclusively to asylum seekers in Expedited Removal proceedings, others also apply to other detained aliens as well.

1. EOIR's Legal Orientation Program

In 2002, the EOIR began a Legal Orientation Program (“LOP”) to provide a “rights” presentation to detainees and to increase pro bono representation. In its first year of operation in select DHS Detention facilities with Immigration Courts, the LOP has increased the productivity of the Immigration Judges. Effectively informing detained immigrants of their legal rights (or lack of available options), helps to clear Court dockets for cases to be heard on the merits.⁴²

³⁷ Id.

³⁸ See Haney (reporting that while every facility is required to provide telephones through which detainees can call collect to counsel, the rates for these calls is typically significantly higher than market rates. Furthermore, none of the detention facilities surveyed in the course of this Study permitted detainees to accept incoming calls, making it particularly difficult for attorneys to contact clients, and impossible to return their calls) See also INS Detention Standards, Detainee Handbook p 12, and Visitation p11 (Attached as Appendix) (stating that detention facilities, are required to post a list of pro bono legal organizations in all detention housing areas and other appropriate areas).

³⁹ See Kyle, Fleming, and Scheuren, Tables P and Q (showing that according to Statistics for FY2003, approximately 22 percent of asylum seekers are unrepresented nationwide, but at some major detention facilities in more rural areas, as many as 85 percent of asylum seekers are not represented).

⁴⁰ See Appendix C.

⁴¹ See discussion *infra* Section B 1-7.

⁴² See EOIR *Pro Bono Program Update* Memorandum from Pro Bono Coordinator (December 2003) (Attached as Appendix D); see also <http://www.usdoj.gov/eoir/probono/MajorInitiatives.htm#DetRightsPres> (last visited Dec. 2004).

Through LOP orientations, representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to large groups of detained individuals. The orientations are normally comprised of three components: 1) the interactive group presentation, which is open to general questions; 2) the individual orientation, where non-represented individuals can briefly discuss their cases with experienced counselors; and 3) the referral/self-help component, where those with potential relief, or those who wish to voluntarily depart the country or request removal are referred to pro bono counsel, or given self-help legal materials and basic training through group workshops, where appropriate.⁴³

It must be noted, however, the status of funding for this program, which is not limited to asylum seekers, is often unclear. In FY2002 and FY2003, Congress allocated \$1 million each year to INS, and in FY2004 to ICE, for non-governmental agencies to provide 'live presentations' to persons in INS detention prior to their first hearing before an immigration judge. These presentations provide immigration detainees with essential information about immigration court procedures and the availability of legal remedies to assist detainees in distinguishing between meritorious cases and frivolous cases."⁴⁴ According to EOIR, the leadership of the Senate Immigration Subcommittee recommended, and INS agreed, that EOIR was better positioned to implement the requirement, and that obvious benefits would accrue to their legal and detention personnel once the program was operational.⁴⁵ EOIR reports that the Legal Orientation Program has, since its inception, enjoyed strong support from INS and then ICE Headquarters, as well as from the ICE Officers in Charge at each of the seven detention facilities served by the program.⁴⁶

With these funds, EOIR was able to provide comprehensive legal orientation to over 17,000 detained respondents, representing approximately 20 percent of the total population of detained aliens, at six detention facilities in its first full year of operation.⁴⁷ Since that time, EOIR has expanded to a seventh site (El Paso, Texas), and expects to provide legal orientation to over 20,000 aliens.

⁴³ See Executive Office of Immigration Review website: <http://www.usdoj.gov/eoir/probono/MajorInitiatives.htm> (last update 11/29/2004).

⁴⁴ This language is taken from House Conference Report No. 108-10, *Making further continuing appropriations for the Fiscal Year 2003, and for Other Purposes* (Pub L. No. 108-7). The language in the conference report is very similar to the Conference reports for FY2002 and FY2004, although the latter does not make specific reference to non-governmental organizations. See Conference Report for Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for Fiscal Year 2002 (Pub. L. No. 107-77) as well as the FY2004 Homeland Security Appropriations Conference Report Accompanying H.R. 2555 (Pub.L. No. 108-90).

⁴⁵ See Letter from Senators Hatch, Leahy, Brownback and Kennedy to Attorney General John Ashcroft (November 30, 2001).

⁴⁶ Letter from Marta Rothwarf, Associate General Counsel, Executive Office for Immigration Review (EOIR) to Mark Hetfield (January 19, 2005).

⁴⁷ *Id.*; For more information about the program and its effectiveness, see Executive Office of Immigration Review website: <http://www.usdoj.gov/eoir/probono/MajorInitiatives.htm> (last update 11/29/2004); see also Appendix D (exemplifying EOIR's exceptional efforts to promote pro bono representation. EOIR recognizes the importance of legal representation and undertakes an effort, locally and nationally, to encourage aliens to seek representation. As noted, the lack of attorneys in many areas where detention facilities are located severely hamper detained aliens right to counsel).

Although ICE transferred \$1 million to EOIR, as directed by Congress, in FY2004, it has yet to transfer the FY2003 funding to EOIR, citing budgetary shortfalls. On February 1, 2005, ICE confirmed that it will transfer \$1 million to EOIR for Legal Orientation Programs for FY2005. The funding owed to ICE for FY2003, however, remains in question.⁴⁸

According to EOIR, the LOP (also known as "Group Rights Presentation Programs") made by non-governmental organizations to detained populations "demonstrated that they are beneficial to all parties involved. These programs result in greater judicial efficiency for EOIR, less time for aliens in DHS detention, and greater access for detained aliens to legal information, counseling, and pro bono representation."⁴⁹

EOIR statistics further demonstrate that, after receiving the presentations, detained individuals make better-informed decisions on proceeding with their cases, and are more likely to obtain representation, that non-profit organizations reach a wider audience of people with minimal resources, and that cases are more likely to be completed faster, resulting in fewer court hearings and less time spent in detention (either because of case completion or removal).⁵⁰ In EOIR's July 27, 2004 briefing to USCIRF staff and experts, EOIR's LOP was shown to have reduced the processing times for detained cases by 1.5 to 3 days at an average cost of \$85 per day for detention.⁵¹ This reduction, as modest as it seems, when applied to the seven facilities in which EOIR's LOP program is in effect, pays for the program over the course of the year.⁵²

EOIR has been working to further develop and expand upon the use of legal orientations to immigrants detained by the DHS. The LOP is currently funding comprehensive Legal Orientation Programs at six major DHS detention facilities in: Eloy, Arizona; Port Isabel, Texas; Batavia, New York; Seattle, Washington; Lancaster, California; and Aurora, Colorado. EOIR notes that with \$1 million in additional funding, that it could expand the LOP to seven more detention centers⁵³

⁴⁸ See, *The American Lawyer*, *On a Shoestring*, July 2004 (referencing a letter sent by Asa Hutchinson, Undersecretary of Border and Transportation Security at the Department of Homeland Security, to Senators Edward Kennedy and Sam Brownback. Subsequently on February 1, 2005, ICE confirmed that it will pay the funds in FY2005); see also *EOIR/USCIRF Meeting Notes*, July 27, 2004 ;In a written question submitted to Attorney General nominee Alberto R. Gonzales during his nomination hearing on January 18, 2005, Senator Edward M. Kennedy asked Mr. Gonzales what he would do, as Attorney General, to ensure that DHS transfers the \$2 million owed to EOIR for these programs for FY2003 and FY2005, and what he would do to increase funding for "these highly successful programs so they reach even greater numbers of detainees." Mr. Gonzales' response was that he "would work with (his) colleagues at the Department of Homeland Security to ensure that any money that is owed to EOIR is transferred and to determine the extent to which funding may be increased in future years." See Appendix H.

⁴⁹ See *EOIR Pro Bono Program Update Memorandum* from Pro Bono Coordinator (December 2003); see also <http://www.usdoj.gov/eoir/probono/MajorInitiatives.htm#DetRightsPres> (last update 11/29/2004).

⁵⁰ See *EOIR Pro Bono Program Update Memorandum* from Pro Bono Coordinator (December 2003); see also <http://www.usdoj.gov/eoir/probono/MajorInitiatives.htm#DetRightsPres> (last update 11/29/2004).

⁵¹ See *EOIR/USCIRF Meeting Notes*, July 27 2004.

⁵² See *EOIR LOP Executive Summary and Statistical Analysis* (Attached as Appendix D). In a subsequent letter to USCIRF, EOIR explained that, while the information provided in the Executive Summary and Statistical Analysis are accurate, at this time it is not possible for EOIR to isolate all factors affecting the measured result. EOIR is actively working to improve the program's performance measurement system.

⁵³ See *EOIR Legal Orientation Program DHS Briefing* (EOIR, July 20, 2004) (Attached as Appendix D) (stating that with extra funding the program could expand such sites as: Aguadilla, Puerto Rico; Bradenton and Miami

2. *Florence Immigrant and Refugee Rights Project*

The Florence Project is a nonprofit legal service organization that provides free legal services to men, women and children detained by the Florence, Arizona ICE Service Processing Center. The Florence Project was created in 1989, prior to the advent of Expedited Removal. Concerned that indigent people in deportation proceedings were in danger of having their rights disregarded, local Immigration Judge John McCarrick urged Phoenix area attorneys to fill the gap in representation left by the absence of a public defender system in immigration proceedings for those who could not afford an attorney. In response to this call, Attorney Chris Brelje, supported and encouraged by his law firm Lewis and Roca, spent a year establishing the project.⁵⁴

Although originally called the Florence Asylum Project, the organization changed its name to the Florence Immigrant and Refugee Rights Project (FIRRP) to reflect the range of legal issues facing detained immigrants. With services first in Florence, FIRRP expanded its reach to include legal services first at the Eloy Detention Center in 1998, then at the Southwest Key Facility in Phoenix for detained children in late 2000. In January 2001 the Integrated Social Services Program was added to address the diverse mental health and social needs of people FIRRP serves.⁵⁵

The Florence Project provides early and accurate legal information in the form of legal orientation presentations to aliens in Eloy, Florence, and the Southwest Key facilities in Phoenix, Arizona. The Eloy facility's presentations are largely funded by the EOIR Legal Orientation Program (LOP); the other sites are primarily dependent on private funding. This presentation enables aliens to make informed decisions about whether and how to proceed with their immigration case. FIRRP contributes to the efficiency of the removal process by equipping aliens to determine up front whether or not there is a basis for them to proceed with their claim. With FIRRP's assistance, aliens who realize there is no legal relief available are less likely to proceed with their claim, reducing their time in, and the government's expenses for, detention. Moreover, by understanding the process better, aliens counseled by FIRRP who decide to proceed are more likely to avoid unnecessary continuances and other demands on the court's time.

For individuals who continue to the final stages of a case, FIRRP provides, at a minimum, assistance with documents and in-depth training on how to represent oneself in immigration court. In many instances, staff attorneys provide representation before immigration judges and on appeal if necessary, all at no charge to the individual. FIRRP also advocates for its clients outside of court, with deportation officers and other staff at the detention facilities.⁵⁶

(Krome) Florida; El Centro, San Diego and San Pedro, California; Houston and Laredo, Texas; Las Vegas, Nevada; and York County, Pennsylvania).

⁵⁴ See the Florence Immigrant and Refugee Rights Project website <http://www.firrp.org/> (last visited 12/10/2004).

⁵⁵ Id.

⁵⁶ Id.

The Florence Project became a “Justice Efficiency Model” that was studied by EOIR in 1998. The model, founded to assist detained aliens while making immigration proceedings more efficient, has been used and modified by other organizations working with the similar populations, including those participating in the EOIR Legal Orientation Program.⁵⁷

3. *Human Rights First’s Asylum Legal Representation Program*

In the New York and New Jersey area, Human Rights First (formerly the Lawyers Committee for Human Rights) has created a pro bono program to match detained asylum seekers with pro bono counsel. The clients of the Asylum Legal Representation Program cannot afford counsel. Volunteer lawyers learn about international human rights law and have the chance to represent individual clients at an asylum interview or a hearing before an immigration judge. The cases are assigned to pro bono volunteers through the Representation Program.⁵⁸

Asylum seekers benefiting from this program are held primarily at two contract detention facilities in the New York – New Jersey area: the two hundred bed facility in Queens, New York, run by the GEO Group Inc. (formerly, the Wackenhut Corporation), and the three hundred bed facility in Elizabeth, New Jersey, run by Corrections Corporation of America. Asylum seekers are sometimes detained in county or local jails in New Jersey as well. The New York – New Jersey area has significant refugee and immigrant populations, and the organizations that provide legal services to indigent asylum seekers are faced with a legal representation need that is much larger than they can meet.⁵⁹

The non-profit organizations in the area work collaboratively with each other, and in cooperation with ICE Detention officials. At the two facilities, several local legal organizations take turns, for periods of several months, in providing new arrivals with legal orientation presentations, initial consultations, and assistance in finding legal counsel. At the Queens facility, this work is performed by Catholic Charities, the Hebrew Immigrant Aid Society (HIAS), and Human Rights First. At the Elizabeth facility, this role is played by American Friends Service Committee, HIAS, the Catholic Legal Immigration Network (CLINIC), and Human Rights First.⁶⁰

When Human Rights First plays this role, an attorney from its office will travel to the detention facility once or twice a week to meet with new arrivals. The attorney describes the Expedited Removal, asylum application and immigration court processes to the asylum seekers and explains how those who are indigent can try to find pro bono legal representation. The attorney will meet with any detainees who would like to meet individually. In these meetings, the detainees can ask specific questions about their situations. The attorney, in turn, will learn more about the asylum seeker’s case. With the asylum seeker’s permission, his or her request for

⁵⁷ See *EOIR’s Evaluation of Rights Presentation*, available at <http://www.usdoj.gov/eoir/statspub/rightspresmain.htm> (last visited 1/28/05).

⁵⁸ See Human Rights First website <http://www.humanrightsfirst.org/asylum/probono/probono.htm>. (last visited 12/10/2004).

⁵⁹ *Informational Interview with the Asylum Program Director*, Human Rights First.

⁶⁰ *Id.*

representation will be forwarded to the legal organizations in the collaborative representation project.⁶¹

During the consultations, the attorney may assist asylum seekers in other ways. The attorney may advise the asylum seeker on steps she needs to take with respect to her asylum case or may answer questions about the individual's eligibility for asylum. Many asylum seekers also have questions about detention. The attorney will explain the process for seeking release on parole, but also explain that these facilities seldom release asylum seekers from detention until after the Immigration Judge has ruled on their application.⁶²

After the request for representation is circulated (with the asylum seeker's permission), to the collaborative representation project, one of the organizations may decide to conduct a full interview to determine if they can take the case on for representation. Before taking on a case, an organization will send a representative to the detention facility to meet with the asylum seeker. This representative will conduct an extensive interview; the interview will assist the organization in deciding whether it can represent the asylum seeker.⁶³

When Human Rights First decides to take on a case for representation, it recruits and trains pro bono lawyers to handle the case. Human Rights First's legal staff also provides significant support to the pro bono attorneys, reviewing their submissions, discussing case strategy and answering frequent questions. Because of the significant work involved in detained cases, including the added travel time, Human Rights First generally encourages two or more attorneys to work on a detained asylum case.⁶⁴

Local legal organizations have formed two unique collaborative projects (the first was started in New York and a second developed subsequently in New Jersey) that are supported by several local foundations. Current funding, however, does not completely fill the need for representation in these areas. Several organizations have had to decrease the number of asylum seekers they assist as they are faced with financial challenges or competing needs; and one organization has had to suspend its ability to take on new cases entirely.⁶⁵

4. *Capital Area Immigrants Rights (CAIR) Coalition*

In an attempt to enhance access to legal advice and assistance, the Department of Homeland Security has partnered with a non-governmental organization in Arlington, Virginia. A little over three years ago, the Capital Area Immigrants' Rights (CAIR) Coalition, in conjunction with the United Nations High Commissioner for Refugees (UNHCR), developed a model with the Arlington, Virginia Asylum Office to provide legal assistance to individuals in the Expedited Removal process

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ See, Acer, Eleanor, *Making a Difference: A Legacy of Pro Bono Representation*, Journal of Refugee Studies, September 2004, Vol. 17: 347-366.

⁶⁵ *Supra note 60.*

who had asserted a fear of returning to their country of nationality.⁶⁶ After the individual is detained and before the scheduling of a credible fear interview, an Asylum Officer asks the individual if he or she has an attorney. If the alien is unrepresented, the Asylum Officer asks if the individual wants CAIR Coalition to seek an attorney to accompany the alien to the credible fear interview. If the individual answers affirmatively, CAIR Coalition is designated as the organization that will make a legal appearance at the interview. A fax is sent to CAIR Coalition, providing the date and location of the credible fear interview.⁶⁷

CAIR Coalition developed a list of volunteer lawyers, law students, and others who were trained to assist individuals at the credible fear interview. A request for legal assistance at the credible fear interview is sent to the volunteer list. The volunteer explains the Expedited Removal process, credible fear, and immigration detention to the alien seeking representation. After the interview, a summary of the individual's claim is presented to a CAIR Coalition staff member. The CAIR Coalition staff attorney screens and reviews the claim to see if the alien appears to be eligible for relief. If the claim appears meritorious, the summary is circulated to a list of pro bono attorneys for the purpose of securing representation for the actual asylum hearing before the immigration judge.⁶⁸

The Arlington Asylum Office has a significantly higher-than-average rate of aliens "dissolving" their asylum claims at the time of the credible fear interview.⁶⁹ According to that office, this might be one way in which the CAIR Coalition contributes to the efficiency of the Expedited Removal process; namely, by aliens dissolving their credible fear claims when an attorney advises them that they may not meet the criteria for asylum.⁷⁰

The success of this model has resulted in higher rates of representation for detained asylum seekers before the Arlington and Baltimore Immigration Courts. In addition, the Arlington Asylum Office has requested that this model be extended to the Atlanta area.⁷¹ It is in the process of being implemented there with the assistance of various large law firms, including Alston & Bird LLP, as well as Atlanta non-profits, including Catholic Social Services.⁷²

5. *Law School Clinical Programs*

Another type of program created by the private sector to provide legal assistance to asylum seekers is one in which second and third year law students enrolled in law school provide

⁶⁶ See 8 CFR 100.4(f)(3) (2004) (establishing that the Arlington Asylum Office is part of U.S. Citizenship and Immigration Services (USCIS) within DHS. The Arlington Asylum office has jurisdiction over the District of Columbia, the western portion of the State of Pennsylvania within the jurisdiction of the Pittsburgh suboffice, and the States of Maryland, West Virginia, North Carolina, Georgia, Alabama and South Carolina).

⁶⁷ Information received from Detention Project Director, CAIR Coalition. For more information see the CAIR Coalition Website, <http://www.caircoalition.org/about.htm> (last visited 12/10/2004).

⁶⁸ Id.

⁶⁹ See DHS Table 11, Fleming and Scheuren (reporting that in FY2003, over 30 percent of asylum seekers referred for credible fear dissolved their asylum claim before the Arlington Asylum office. Compare this to a national rate of under 8 percent for the same period of time).

⁷⁰ Meeting between USCIRF Immigration Counsel Hetfield, Dr. Fritz Scheuren and the Arlington Asylum Office (March 23, 2004).

⁷¹ Atlanta is under the jurisdiction of the USCIS Asylum Office in Arlington, Virginia.

⁷² Id.

attorney services. This program is exemplified by the Clinic for Asylum, Refugee and Emigrants Services (CARES) at Villanova University School of Law in Villanova, Pennsylvania, where law students represent asylum seekers in detention. Most of CARES' clients entered the country without proper travel documents and have asserted a fear of returning to their country of nationality. They are then processed in accordance with the Expedited Removal rules. Students enrolled in CARES travel up to two hours each way to county jails in York and Berks Counties in rural Pennsylvania to represent their asylum clients. Many of the clients are unaccompanied minors and families with minor children.⁷³

When the clinic learns about detained asylum seekers who need legal representation (most of the referrals are from the Pennsylvania Immigration Resource Center (PIRC)), a team of two students typically travel to the detention center to conduct an intake interview with the clients. If the clinic accepts the case, the students represent the clients throughout the process, beginning with the credible fear interview and through the hearing on the merits of the asylum claim. CARES receives additional help from Students enrolled in Villanova's undergraduate Department of Modern Languages with interpretation and translation.⁷⁴

6. *Private Detention Facility Representation*

At least one of the private detention facility contractors to ICE, Corrections Corporation of America ("CCA") is under contract with DHS to provide private counsel to speak to ICE detainees. At its Laredo, Texas facility, ICE has contracted with CCA to hire a local attorney to assist the detainees, at the detainee's request, with legal matters pertaining to their detention. While originally envisioned as legal access to detainees to resolve problems with the facility (e.g., food, medical care issues, etc.), the attorney retained by CCA in Laredo, when requested by the detainee, helps the detainee understand the immigration process, obtains forms or documents the detainee specifically requests and provides a translation of the forms. This attorney may also do legal research for the detainee and give his advice to the detainee on the likelihood of success on the merits of his case. His primary purpose, however, is to facilitate a resolution to detention-related problems in the facility. Accordingly, this attorney does not represent aliens in immigration court proceedings, nor is he a specialist in immigration law.⁷⁵

In a discussion with the attorney hired by CCA to carry out its part of the DHS contract, we were informed that his practice is not an immigration law centered practice. Further, he does not provide a general rights presentation, and can only go to the facility to talk to the detainee when a detainee so requests. The attorney indicated that he spent less time in 2004, than in previous years, on matters related to detention issues for CCA. He also specifically noted that he does not become retained counsel on any these cases, and that he is limited in the scope of the

⁷³ Information received from CARES representative (2004); for more information see Villanova University's School of Law website, <http://www.law.vill.edu/currentstudents/clinicsandexternships/caresclinic.asp> (last visited 12/10/2004).

⁷⁴ Id.

⁷⁵ See CCA Inmate Orientation Handbook at 11-12; see also "Request for Attorney/Paralegal Conference" form (Attached as Exhibit E) (showing that in fact, in the "Inmate Orientation Handbook" that CCA provides each detainee, under "Legal Assistance" they note that CCA has retained counsel to assist inmates is clearly designed for internal prison issues, not necessarily for the complicated issues related to immigration law, or asylum cases in particular).

representation he provides. Finally, he pointed out that there are few immigration lawyers in the Laredo area and that he is not aware of anyone who practices asylum law.⁷⁶

7. *The Overseas Processing Entity Model of the Department of State*

At DHS, Refugee and Asylum adjudications are administered by the USCIS Office of Refugees, Asylum, and International Operations (ORAIO). Both programs aim to protect aliens who meet the definition of a “refugee” under U.S. law.⁷⁷ There are some notable differences, however. The obvious one is that refugee applicants apply outside of the United States, while aliens must be physically located within the United States to apply for asylum. Another important distinction, however, is that asylum seekers must prepare their own asylum applications or, from within the detention center, find and retain an attorney to assist them. In contrast, refugee applicants are generally required by the US Refugee Program to complete their forms with the assistance of a caseworker working for an agency under contract with the Department of State.⁷⁸

These agencies are known as Overseas Processing Entities (OPEs), and were formerly known as Joint Voluntary Agencies (JVAs). The OPE prepares cases for DHS adjudication, including screening applicants to determine whether an individual appears to meet the requirements to receive a refugee interview; reviewing an individual’s refugee characteristics; conducting family history interviews; and compiling documentation needed for DHS adjudication. Most importantly, while the OPE does not “represent” refugee applicants in the attorney-client sense, the OPE does assist the applicant with completing the Form I-590 (Registration for Classification as Refugee), and with articulating the applicant’s refugee claim. The Refugee Application is intended to elicit the same information as the Form I-589 Application for Asylum. It is somewhat ironic that, while asylum applicants must fill out their own applications or find legal counsel to do so, refugee applicants overseas are generally not permitted to fill out the refugee application on their own. Form filling and case preparation is done with the assistance of the OPE, working under contract with the Department of State.⁷⁹

In a recent report on the Refugee Program commissioned by the Department of State, David Martin commented that, in preparing the refugee application for submission to DHS, an OPE caseworker “typically questions the applicant to capture the full particulars of the refugee claim and to record it in the file that will be presented to the DHS officer. This too may require considerable skill and up to several hours of time, because refugees often have only a dim idea of which parts of their background are salient for the specific purposes of the DHS refugee determination.”⁸⁰

⁷⁶ Conversation between author and DHS contract attorney (Dec. 7, 2004).

⁷⁷ See 8 USC 1101(a)(42)(2004) Immigration and Nationality Act (defining what it means to be classified as a refugee).

⁷⁸ These agencies are generally overseas offices of “voluntary agencies” based in the United States, or the Geneva-based International Organization for Migration.

⁷⁹ Section 3.3 of the USCIS Refugee Officer’s Field Manual (2003).

⁸⁰ *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement*, David A. Martin (July 8, 2004), available at, <http://www.state.gov/g/prm/refadm/rls/rpts/36958.htm> (last visited 1/28/2005).

In the U.S. Refugee program, the operating assumption of the government seems to be that a refugee applicant cannot successfully complete the application without assistance. Seeing that only 2 percent of unrepresented asylum applicants in Expedited Removal are ultimately successful in their asylum application, the same assumption may be applicable to asylum seekers in Expedited Removal.

If asylum seekers were concentrated in greater numbers in fewer detention facilities, the OPE may provide a useful model for asylum seekers in Expedited Removal. Such a system could have potential in the context of explaining the credible fear determination process to aliens, assisting them with finding counsel, as well as with more expeditious preparation of their asylum applications.

E. The Future of Representation of Detained Asylum Seekers in Expedited Removal Proceedings

A continued problem reported by all NGOs and pro bono organizations is the shrinking pool of available funding to run these programs. For example, there is at least one major provider of services to asylum seekers that is disengaging from providing representation. As a result of funding difficulties, the Hebrew Immigrant Aid Society (HIAS), a major service provider in the New York/New Jersey area, is no longer accepting new clients.⁸¹

Some organizations are restructuring how these types of services are provided. CLINIC, a national organization dedicated to the training of Catholic Charities and Catholic Social Services agencies in providing immigration services to the poor and detained asylum seekers, is currently restructuring how these services are provided. CLINIC is now seeking not only alternate private sources of funding, but also is creating new programs to better support and provide representation, including turning over CLINIC affiliates to Diocesan partners, to ensure continued funding while still providing support to allow these organization to focus on maintaining the standards of representation. However, many social service organizations report that they require continued funding from the private sector- funding which is becoming increasingly scarce.⁸²

The biggest potential source of representation remains the private bar. Indisputably, there are available a number of private attorneys willing to take the case of asylum seekers who can pay for such services. However, for those unable to pay, or for those detained asylum seekers in rural detention facilities unable to contact competent counsel, representation is difficult to obtain. One obvious solution is an expansion of programs similar to those done where larger private law firms provide pro bono assistance, usually through newer attorneys. In fact, a recent Supreme Court case on immigration law was handled by pro bono counsel and established case law likely

⁸¹ Conversation with HIAS representative (Dec. 2004).

⁸² Conversation with CLINC representative (Dec. 2004).

to impact thousands of similar cases.⁸³ Access to Representation in any form, but particularly through competent immigration counsel is an essential element to a fair, just, and rapid asylum process.

Congress requested that this study address whether asylum seekers in Expedited Removal are being incorrectly removed to countries where they may be persecuted, and whether such asylum seekers are being detained under inappropriate conditions. The conditions of detention clearly create certain impediments that make it difficult for asylum seekers to effectively represent themselves or obtain representation. Moreover, *bona fide* asylum seekers who navigate the adversarial Expedited Removal process unassisted by legal counsel seem particularly vulnerable to being incorrectly removed. The models discussed above, if more widely and consistently applied, would help protect bona fide asylum seekers from this danger, without undermining the efficiency of the process.

⁸³ Leocal v. Ashcroft, 125 S. Ct. 377 (2004). Leocal's case fit the criteria for review by the BIA Pro Bono Project, a collaborative effort of four non-governmental agencies (Catholic Legal Immigration Network, Inc., the American Immigration Law Foundation, the Capital Area Immigrants' Rights Coalition, and the National Immigration Project of the National Lawyer's Guild) and the Executive Office for Immigration Review. The Project matches pro bono counsel with unrepresented detainees who have cases pending before the BIA.

Through the BIA Project, Leocal's case was matched with a team of pro bono attorneys at King & Spaulding, which represented him before the BIA, Eleventh Circuit Court of Appeals and ultimately the U.S. Supreme Court. Without the pro bono representation of King & Spaulding, it is unlikely that Leocal's case would have progressed beyond the BIA and onto the Supreme Court, meaning that the unanimous decision that allowed for Leocal to return to the country and his family would not have happened.

"Considering the complexity of immigration law, the law's severe penalties, and the fact that most immigrants lack the money to hire attorneys, anyone who is at risk of being removed from the U.S. should be able to secure legal representation," says Donald Kerwin, Executive Director of the Catholic Legal Immigration Network, Inc. "The Supreme Court's 9 - 0 ruling in favor of a man who would have been otherwise separated from his family clearly demonstrates that the system needs to take into account the potentially tragic consequences of denying immigrants legal representation."

Appendix A

U.S. Department of Justice
Immigration and Naturalization Service

**Record of Sworn Statement in Proceedings
under Section 235(b)(1) of the Act**

Statement by: _____

In the case of: _____

Date of Birth: _____ Gender (circle one): Male Female

At: _____ Date: _____

Before: _____
(Name and Title)

In the _____ language. Interpreter _____ Employed by _____

I am an officer of the United States Immigration and Naturalization Service. I am authorized to administer the immigration laws and to take sworn statements. I want to take your sworn statement regarding your application for admission to the United States. Before I take your statement, I also want to explain your rights, and the purpose and consequences of this interview.

You do not appear to be admissible or to have the required legal papers authorizing your admission to the United States. This may result in your being denied admission and immediately returned to your home country without a hearing. If a decision is made to refuse your admission into the United States, you may be immediately removed from this country, and if so, you may be barred from reentry for a period of 5 years or longer.

This may be your only opportunity to present information to me and the Immigration and Naturalization Service to make a decision. It is very important that you tell me the truth. If you lie or give misinformation, you may be subject to criminal or civil penalties, or barred from receiving immigration benefits or relief now or in the future.

Except as I will explain to you, you are not entitled to a hearing or review.

U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country. If you fear or have a concern about being removed from the United States or about being sent home, you should tell me so during this interview because you may not have another chance. You will have the opportunity to speak privately and confidentially to another officer about your fear or concern. That officer will determine if you should remain in the United States and not be removed because of that fear.

Until a decision is reached in your case, you will remain in the custody of the Immigration and Naturalization Service.

Any statement you make may be used against you in this or any subsequent administrative proceeding.

Q: Do you understand what I've said to you?

A.

Q: Do you have any questions?

A.

Q: Are you willing to answer my questions at this time?

A.

Q: Do you swear or affirm that all the statements you are about to make are true and complete?

A.

**Jurat for Record of Sworn Statement in
Proceedings under Section 235(b)(1) of the Act**

Q: Why did you leave your home country or country of last residence?

A.

Q. Do you have any fear or concern about being returned to your home country or being removed from the United States?

A.

Q. Would you be harmed if you are returned to your home country or country of last residence?

A.

Q. Do you have any questions or is there anything else you would like to add?

A.

I have read (or have had read to me) this statement, consisting of _____ pages (including this page). I state that my answers are true and correct to the best of my knowledge and that this statement is a full, true and correct record of my interrogation on the date indicated by the above-named officer of the Immigration and Naturalization Service. I have initialed each page of this statement (and the corrections noted on page(s) _____).

Signature: _____

Sworn and subscribed to before me at _____
on _____.

Officer, United States Immigration and Naturalization Service

Witnessed by: _____

_____	_____	_____	_____
District Office Code	Asylum Office Code	Alien's File Number	Alien's Last/ Family Name
_____	_____	_____	_____
Asylum Officer's Last Name	Asylum Officer's First Name	Alien's Nationality	

All statements in italics must be read to the applicant

SECTION I:

INTERVIEW PREPARATION

- 1.1 _____ / _____ / _____
 Date of arrival [MM/DD/YY]
- 1.2 _____
 Port of arrival
- 1.3 _____ / _____ / _____
 Date of detention [MM/DD/YY]
- 1.4 _____
 Place of detention
- 1.5 _____ / _____ / _____
 Date of AO orientation [MM/DD/YY]
- 1.6 _____
 If orientation more than one week from date of detention, explain delay
- 1.7 _____ / _____ / _____
 Date of interview [MM/DD/YY]
- 1.8 _____
 Interview site
- 1.9 Applicant received and signed **Form M-444** and relevant *pro bono* list on _____ / _____ / _____
 Date signed [MM/DD/YY]
- 1.10 Does applicant have consultant(s)? Yes No
- 1.11 If yes, consultant(s) name, address, telephone number and relationship to applicant

- 1.12 Persons present at the interview (check which apply)
- 1.13 Consultant(s)
- 1.14 Other(s), list: _____
- 1.15 No one other than applicant and asylum officer
- 1.16 Language used by applicant in interview: _____
- 1.17 _____ Yes No
 Interpreter Service, Interpreter ID Number. Interpreter Has Forms Time Started Time Ended
- 1.18 _____ Yes No
 Interpreter Service, Interpreter ID Number. Interpreter Has Forms Time Started Time Ended
- 1.19 _____ Yes No
 Interpreter Service, Interpreter ID Number. Interpreter Has Forms Time Started Time Ended
- 1.20 Interpreter **was not changed** during the interview
- 1.21 Interpreter **was changed** during the interview for the following reason(s):
- 1.22 Applicant requested a female interpreter replace a male interpreter, or *vice versa*
- 1.23 Applicant found interpreter was not competent
- 1.24 Applicant found interpreter was not neutral
- 1.25 Officer found interpreter was not competent
- 1.26 Officer found interpreter was not neutral
- 1.27 Bad telephone connection
- 1.28 Asylum officer read the following paragraph to the applicant at the beginning of the interview:

Alien's File Number:

The purpose of this interview is to determine whether you may be eligible for asylum or protection from removal to a country where you fear persecution or torture. I am going to ask you questions about why you fear returning to your country or any other country you may be removed to. It is very important that you tell the truth during the interview and that you respond to all of my questions. This may be your only opportunity to give such information. Please feel comfortable telling me why you fear harm. U.S. law has strict rules to prevent the disclosure of what you tell me today about the reasons why you fear harm. The information you tell me about the reasons for your fear will not be disclosed to your government, except in exceptional circumstances. The statements you make today may be used in deciding your claim and in any future immigration proceedings. It is important that we understand each other. If at any time I make a statement you do not understand, please stop me and tell me you do not understand so that I can explain it to you. If at any time you tell me something I do not understand, I will ask you to explain.

SECTION II: BIOGRAPHIC INFORMATION

2.1 _____
Last Name/ Family Name [ALL CAPS]

2.2 _____ 2.3 _____
First Name Middle Name

2.4 ____/____/____ 2.5 Gender Male Female
Date of birth [MM/DD/YY]

2.6 _____
Other names and dates of birth used

2.7 _____ 2.8 _____
Country of birth Country (countries) of citizenship (list all)

2.9 _____
Address prior to coming to the U.S. (List Address, City/Town, Province, State, Department and Country).

2.10 _____ 2.11 _____ 2.12 _____
Applicant's race or ethnicity Applicant's religion All languages spoken by applicant

2.13 Marital status: Single Married Legally separated Divorced Widowed
2.14 Did spouse arrive with applicant? Yes No
2.15 Is spouse included in applicant's claim? Yes No
2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location (if with applicant, provide A-Number):

2.17 Children: Yes No

2.18 List any children (Use the continuation section to list any additional children):

Date of birth (MM/DD/YY)	Name	Citizenship	Present location (if w/PA, list A-Numbers)	Did child arrive with PA?	Is child included in PA's claim?
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Alien's File Number:

_____	_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Alien's File Number:

2.19 Does applicant claim to have a medical condition (physical or mental), or has the officer observed any indication(s) that a medical condition exists? If YES, answer questions 2.20 and 2.21 and explain below. Yes No

2.20 Has applicant notified the facility of medical condition? Yes No

2.21 Does applicant claim that the medical condition relates to torture? Yes No

2.22 Does the applicant have a relative, sponsor or other community ties, including spouse or child already listed above? Yes No

2.23 If YES, provide information on relative or sponsor (use continuation section, if necessary):

Name

Relationship

Address

Telephone Number

Citizen Legal Permanent Resident Other

SECTION III:

CREDIBLE FEAR INTERVIEW

The following notes are not a verbatim transcript of this interview.

These notes are recorded to assist the individual officer in making a credible fear determination and the supervisory asylum officer in reviewing the determination.

There may be areas of the individual's claim that were not explored or documented for purposes of this threshold screening.

The asylum officer must elicit sufficient information related to both credible fear of persecution and credible fear of torture to determine whether the applicant meets the threshold screening. Even if the asylum officer determines in the course of the interview that the applicant has a credible fear of persecution, the asylum officer must still elicit any additional information relevant to a fear of torture. Asylum officers are to ask the following questions and may use the continuation sheet if additional space is required. If the applicant replies YES to any question, the asylum officer must ask follow-up questions to elicit sufficient details about the claim in order to make a credible fear determination.

3.1 a. *Have you or any member of your family ever been mistreated or threatened by anyone in any country to which you may be returned?*
 Yes No _____

b. *Do you have any reason to fear harm from anyone in any country to which you may be returned?*
 Yes No

c. If YES to questions a and/or b, was it or is it because of any of the following reasons? (Check each of the following boxes that apply).
 Race Religion Nationality Membership in a particular social group Political Opinion

Alien's File Number:

3.2 At the conclusion of the interview, the asylum officer must read the following to applicant:

If the Department of Homeland Security determines you have a credible fear of persecution or torture, your case will be referred to an immigration court, where you will be allowed to seek asylum or withholding of removal based on fear of persecution or withholding of removal under the Convention Against Torture. The Field Office Director in charge of this detention facility will also consider whether you may be released from detention while you are preparing for your hearing. *If the asylum officer determines that you do not have a credible fear of persecution or torture, you may ask an Immigration Judge to review the decision. If you are found not to have a credible fear of persecution or torture and you do not request review, you **may be removed** from the United States as soon as travel arrangements can be made. Do you have any questions?*

3.3 At the conclusion of the interview, the asylum officer must read a summary of the claim, consisting of the responses to Questions 3.1 a-c and information recorded in the Additional Information/Continuation section, to applicant.

****Typed Question and Answer (Q&A) interview notes and a summary and analysis of the claim must be attached to this form for all negative credible fear decisions. These Q&A notes must reflect that the applicant was asked to explain any inconsistencies or lack of detail on material issues and that the applicant was given every opportunity to establish a credible fear.

SECTION IV:

CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

- 4.1 There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.
- 4.2 Applicant found **not** credible because (check boxes 4.3-4.5, which apply):
- 4.3 Testimony was internally inconsistent on material issues.
- 4.4 Testimony lacked sufficient detail on material issues.
- 4.5 Testimony was not consistent with country conditions on material issues.

Nexus

- 4.6 Race 4.7 Religion 4.8 Nationality 4.9 Membership in a Particular Social Group

(Define the social group): _____

- 4.10 Political Opinion 4.11 Coercive Family Planning [CFP] 4.12 No Nexus

Credible Fear Finding

- 4.13 Credible fear of **persecution** established.
- OR**
- 4.14 Credible fear of **torture** established.
- OR**
- 4.15 Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

- 4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):
- 4.17 Particularly Serious Crime 4.18 Security Risk 4.19 Aggravated Felon
- 4.20 Persecutor 4.21 Terrorist 4.22 Firmly Resettled
- 4.23 Serious Non-Political Crime Outside the United States
- 4.24 Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

Appendix C

Affirmative Asylum Application Outcome and Representation Status by Asylum Office, FY 2000-2003

Source: USCIS Asylum Division

Asylum Office	Total Adjudicated*		Granted Asylum			Total Adjudicated*
	Rep.	Unrep.	Rep.	Unrep.	Total	
ZSF	43%	57%	51%	43%	46%	26,393
ZAR	38%	62%	55%	35%	42%	22,838
ZMI	15%	85%	38%	33%	34%	33,548
Mean	34%	66%	38%	24%	28%	27,994
ZNK	38%	62%	26%	18%	21%	20,381
Median	37%	63%	36%	17%	24%	24,451
ZLA	26%	74%	54%	16%	26%	70,061
ZNY	40%	60%	20%	16%	18%	26,063
ZHN	33%	67%	24%	15%	18%	12,483
ZCH	37%	63%	34%	14%	21%	12,188
Total	31%	69%	41%	24%	29%	223,955

* Includes cases granted, denied, referred, rejected, closed, and marked no show.

**EOIR Legal Orientation Program
DHS Briefing - July 20, 2004**

- A. Congressional Appropriation of \$1m to INS - FY'02; DHS - FY'03 and FY'04
- Transferred to EOIR FY'02 and FY'04 - Administered by Pro Bono Program
 - Norwich University '04 BPA - \$977,500 includes:
 - *7 Programs for '04 *Administration *Travel
 - *Training Conference *Database *Evaluation
- B. Sites where EOIR-funded Legal Orientation Programs are being carried out for all detainees prior to appearing in immigration court:
- 1 Aurora (Denver), Colorado (since 6/30/03) - Lutheran Immigrant and Refugee Services (LIRS) in conjunction with the Rocky Mountain Immigrant Advocacy Network (RMIAN)(\$146,700);
 - # Group Orientations through 6/29/04 - 156
 - # Attendees - 2,382
 - # Individual Orientations - 739
 - 2 Batavia, New York (since 2/21/03) - Volunteer Lawyers Project (VLP) of the Erie County Bar Association (\$60,120);
 - # Group Orientations through 02/20/04 - 156
 - # Attendees - 701
 - # Individual Orientations - 393
 - 3 Eloy, Arizona (since 3/7/03) - Florence Immigrant and Refugee Rights Project (FIRRP)(\$149,639);
 - # Group Orientations through 3/06/04 - 270
 - # Attendees - 4,238
 - # Individual Orientations - 2,562
 - 4 Lancaster, California - (since 5/27/03) - Catholic Legal Immigration Network, Inc. (CLINIC)(\$124,819);
 - # Group Orientations through 5/26/04 - 108
 - # Attendees - 3,399
 - # Individual Orientations - 424
 - 5 Port Isabel (Los Fresnos), Texas (since 2/18/03) - American Bar Association (ABA) through ProBAR (South Texas Asylum Representation Project)(\$136,600);
 - # Group Orientations through 2/17/04 - 234
 - # Attendees - 5,218
 - Individual Orientations - 781
 - # Projected detainees served in 12 months - 5,950

- 6 Seattle, Washington (since 3/17/03) - Northwest Immigrant Rights Project (NWIRP)(\$129,800);
- # Group Orientations through 3/16/04 - 127
 - # Attendees - 1,103
 - # Individual Orientations - 671

Total # detained aliens served in 1st Year of LOP - 17,041

- C. 7th site added under FY '04 funding - El Paso, Texas, by the Catholic Legal Immigration Network, Inc. (CLINIC)(\$108,222 for 9 months)
- # Estimated detainees served in 12 months - 3,850
- D. Non EOIR-funded - Florence, Arizona - Florence Immigrant and Refugee Rights Project (FIRRP) [the creators of the "Justice Efficiency Model", since 1990)
- # Estimated detainees served in past 12 months - 2,150
- E. Possible future EOIR LOP sites:
- 1 Aguadilla, Puerto Rico - # estimated detainees served in 12 months - 735
 - 2 Bradenton, Florida - # estimated detainees served in 12 months - 1,860
 - 3 El Centro, California - # estimated detainees served in 12 months - 2,200
 - 4 Houston, Texas - # estimated detainees served in 12 months - 1,740
 - 5 Laredo, Texas - # estimated detainees served in 12 months - 2,360
 - 6 Las Vegas, Nevada - # estimated detainees served in 12 months - 1,100
 - 7 Miami (Krome), Florida - # estimated detainees served in 12 months - 2,975
 - 8 Newark, New Jersey - # estimated detainees served in 12 months - 1,930
 - 9 San Diego, California - # estimated detainees served in 12 months - 3,870
 - 10 San Pedro, California - # estimated detainees served in 12 months - 1,590
 - 11 York County, Pennsylvania - # estimated detainees served in 12 months - 1,675

*The "estimated detainees served in 12 months" is based upon 70% of EOIR's detained proceeding completion data for the past fiscal year. Based upon first year's statistics under the LOP, an average of 30% of detained aliens in proceedings are either released under bond prior to their initial removal hearing, or decline to attend the Legal Orientation Program.

Detained Completions with and without Applications and Grant Rate

	Total Completions	Detained w/o Apps	Detained w/ Apps	% w/ Apps	Grants	Denials	Detained w/ Apps. Grant Rate
PIS							
2/18/01-2/17/02	7,293	7,243	50	1%	10	9	53%
2/18/02-2/17/03	6,432	6,343	89	1%	18	20	47%
2/18/03-2/17/04	6,854	6,735	119	2%	60	30	67%
BTV							
2/21/01-2/20/02	855	781	74	9%	18	46	28%
2/21/02-2/20/03	894	792	102	11%	22	53	29%
2/21/03-2/20/04	899	794	105	12%	26	52	33%
EAZ							
3/7/01-3/6/02	6,371	5,869	502	8%	197	237	45%
3/7/02-3/6/03	7,886	7,370	516	7%	160	280	36%
3/7/03-3/6/04	7,430	6,805	625	8%	227	330	41%
AIR							
3/17/01-3/16/02	2,514	2,315	199	8%	54	111	33%
3/17/02-3/16/03	2,165	1,995	170	8%	40	84	32%
3/17/03-3/16/04	1,881	1,725	156	8%	43	67	39%
LAN							
5/27/01-5/26/02	5,905	5,615	290	5%	83	126	40%
5/27/02-5/26/03	5,070	4,637	433	9%	86	257	25%
5/27/03-5/26/04	4,784	4,326	458	10%	112	238	32%
WSI							
6/22/01-6/21/02	2,785	2,696	89	3%	30	38	44%
6/22/02-6/21/03	2,913	2,855	58	2%	18	29	38%
6/22/03-6/21/04	2,648	2,530	118	4%	34	62	35%

Bold = Updated Information

6/21/04

AVERAGE PROCESSING TIME

	Received Date to Proceedings Completion Date	Received Date to First Hearing Date	First Hearing Date to Proceeding Completion Date
PIS			
2/18/01-2/17/02	24	15	9
2/18/02-2/17/03	23	11	13
2/18/03-2/21/04	22	10	12
BTV			
2/21/01-2/20/02	24	8	17
2/21/02-2/20/03	28	7	21
2/21/03-2/20/04	25	6	19
EAZ			
3/7/01-3/6/02	30	12	19
3/7/02-3/6/03	23	14	9
3/7/03-3/6/04	21	12	9
AIR			
3/17/01-3/16/02	16	7	10
3/17/02-3/16/03	14	4	9
3/17/03-3/16/04	11	3	8
LAN			
5/27/01-5/26/02	22	13	9
5/27/02-5/26/03	25	12	13
5/27/03-5/26/04	19	8	11
WSI			
6/22/01-6/21/02	13	6	7
6/22/02-6/21/03	12	5	7
6/22/03-6/21/04	16	5	11

Bold = Updated Information

6/21/04



Pro Bono Program Update - December 2003

To: All Board Members and Staff
From: Steven Lang, Pro Bono Coordinator

I am pleased to send all of you this update on the Pro Bono Program. Since April of 2000, the Pro Bono Program has worked to improve the level and quality of *pro bono* representation. This has been carried out primarily through initiatives which facilitate access to information and create new incentives for attorneys and law students to take on *pro bono* cases before the immigration courts and Board of Immigration Appeals (BIA). The Program has also continued to perform an important community relations role, with the Coordinator often serving as liaison between our agency and the non-profit legal community on issues related to legal assistance for indigent aliens.

In these difficult budget times, the Pro Bono Program has limited its focus over the past year to three major initiatives - the Legal Orientation Program, the BIA Pro Bono Project, and interagency initiatives aimed at improving access to *pro bono* legal services for Unaccompanied Alien Children. The Program also continues to promote and develop two earlier initiatives - the Pro Bono Program webpage, and the Model Hearing Program (MHP).

Many of the Program's accomplishments owe their success to the numerous Board and Clerk's Office staff, Immigration Judges and Court Administrators whose interest and active involvement in the Program have helped to shape its approach and direction. Our agency has long recognized the mutual benefits derived from strong *pro bono* participation in immigration proceedings. I look forward to your comments, suggestions, and enthusiasm throughout this next year as we strive to meet future challenges and goals.

I. Legal Orientation Programs

In FY'02, Congress appropriated \$1 million to the INS for "Legal Orientation Programs." The Pro Bono Program lead efforts to transfer these funds to EOIR, as well as to determine the best available means of funding such programs across the country. These funds have recently been renewed. We are currently in the process of evaluating program performance and reviewing proposals for continued, as well as new funding.

EOIR's past experience with Legal Orientation Programs (also known as "Rights Presentations") demonstrated that they are beneficial to all parties involved. These programs result in greater judicial efficiency for EOIR, less time for aliens in DHS detention, and greater access for detained aliens to legal information, counseling, and *pro bono* representation.

Through such orientations, representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to large groups of detained

individuals. The orientations are normally comprised of three components: 1) the interactive group orientation, which is open to general questions; 2) the individual orientation, wherein non-represented individuals can briefly discuss their cases with experienced counselors; and 3) the self-help component, wherein those detainees who wish to pursue claims for relief are provided with self-help legal materials and assistance through group workshops, where appropriate.

EOIR currently maintains a contract (Blanket Purchase Agreement - BPA) with Norwich University to carry out a comprehensive Legal Orientation Presentation Training Program at six detention sites across the country. Serving as the Contracting Officer's Technical Representative (COTR), the Pro Bono Coordinator has worked with Norwich University, six non-profit agency subcontractors, EOIR components, DHS and local detention facility representatives to implement the programs at the following sites:

<u>Detention/Immigration Court</u>	<u>Subcontractor</u>
1. Port Isabel, Texas	American Bar Association (through ProBAR)
2. Eloy, Arizona	Florence Immigrant & Refugee Rights Project (FIRRP)
3. Batavia, New York	Erie County Bar Association VLP
4. Seattle, Washington	Northwest Immigrant Rights Project (NWIRP)
5. Lancaster, California	Catholic Legal Immigration Network, Inc. (CLINIC)
6. Aurora, Colorado	Lutheran Immigrant & Refugee Services (LIRS), together with the Rocky Mountain Immigrant Advocacy Network (RMIAN)

More than 23,000 detainees are expected to benefit from the program in the first 12 months of full operation, or roughly 20 percent of all DHS detainees who appear before the Immigration Courts each year. As of the end of August 2003, preliminary results have shown an **average decrease in detained proceeding completion times of 1.5 days per detainee** (from receipt to proceeding completion date), with three of the **newest sites averaging 2.2 days** (from first Master Calendar hearing to proceeding completion date) as compared to the 12-month period preceding each sites' start date.

II. The BIA Pro Bono Project.

Since its implementation in January of 2001, the Project has succeeded in recruiting over 350 attorneys, law students and Accredited Representatives to write appeal briefs for over 250 USICE detainees who would have otherwise appeared without representation before the BIA. The Project was recently expanded to include certain non-detained case appeals, as well.

Under the Project, the Catholic Legal Immigration Network (CLINIC), Capital Area Immigrant Rights (CAIR) Coalition, American Immigration Law Foundation (AILF) and National Lawyers Guild send experienced volunteer attorney "screeners" to the BIA Clerk's Office every week to review selected case appeal transcripts. After review, the screeners write redacted summaries for cases they believe to be most suitable for *pro bono* representation. These summaries are e-mailed to participating *pro bono* representatives throughout the country who may select cases in which to enter as counsel. Those representatives who accept a case under the Project receive a copy of the file, as well as additional time to file the appeal brief.

Legal representation in many of these cases has already had a meaningful impact. Since attorneys or accredited representatives usually identify and argue the issues better on appeal, immigrants with meritorious cases have a greater chance of success. Representation also reduces procedural errors and enables the BIA to provide a more effective and timely case review. Special thanks to the Clerk's Office this past year for their great assistance in facilitating key elements of the Project.

III. Unaccompanied Alien Children in DHS/ORR Custody

Since early 2003, the Pro Bono Program, together with OCIJ, has been working with the newly-created Division for Unaccompanied Children's Services at the Office of Refugee Resettlement (ORR) to discuss, among other matters, new initiatives aimed at improving legal assistance for this special population.

EOIR's involvement with ORR was anticipated by Section 462 of the Homeland Security Act in "developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child," and in "compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children."

Efforts are currently underway to develop and implement a pilot program in Chicago which would combine greater pro bono attorney involvement with a new volunteer 'Guardian Ad Litem' (GAL) component. The GAL would function *in loco parentis* in the context of any immigration court proceedings to encourage the child to participate to the fullest extent possible. The GAL would also make a determination as to the best interests of the child which may be offered to the attorney and/or immigration court as a recommendation.

Together with ORR, the Pro Bono Program has also formed an interagency pro bono committee to better coordinate national and local pro bono efforts to assist these children.

IV. Pro Bono Program Webpage

The Pro Bono Program has steadily expanded its heavily-visited internet webpage (#1 after the Homepage). The webpage currently includes an online version of the "List of Free Legal Service Providers," and a variety of links to governmental and non-governmental sites, including bar associations, law school immigration clinics, human rights groups and *pro bono* organizations providing access to asylum documentation and self-help legal materials (<http://www.usdoj.gov/coir/probono/probono.htm>).

Also found on the Pro Bono Program webpage are the recently-posted "Immigration Court Representation Summaries." These concise reports provide detailed information regarding the number of case completions, as well as custody status, nationality, language, and forms of relief requested by individuals in removal proceedings. The reports are designed to assist *pro bono* groups in their efforts to assess the needs of their local communities in order to better direct their services.

V. Model Hearing Program

The Model Hearing Program is an educational program developed by the Pro Bono Program to improve the quality of advocacy before the court, as well as increase levels of *pro bono* representation. Model Hearings consist of small-scale 'mock' trial training sessions held in the immigration court and presented by volunteer immigration judges. The training sessions, carried out in cooperation with partnering bar associations and/or *pro bono* agencies, provide practical and relevant 'hands-on' immigration court training to small groups of attorneys/law students with an emphasis on practice, procedure and advocacy skills. Participants receive training materials and CLE credit, and agree to perform a minimal level of *pro bono* representation throughout the year. Since June of 2001, over 13 Model Hearing training sessions were held in the following court locations: San Diego, Dallas, York, Cleveland, Newark and New York City. Special thanks to the immigration court judges and staff in York, Pennsylvania, New York City, and Dallas for their help in facilitating Model Hearings this past year.

EOIR Legal Orientation Program - FY 2004

1. SCOPE

The Executive Office for Immigration Review (EOIR) requires a Contractor to provide Legal Orientation Training Programs to aliens detained by the Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement (BICE, a legacy agency of the Immigration and Naturalization Service, INS) who are in immigration proceedings before the EOIR. The legal orientation programs will be locally performed by non-governmental non-profit organizations (NGOs) that regularly provide legal services to aliens.

2. BACKGROUND

A. EOIR was established in January 1983. Under delegated authority of the Attorney General of the United States, EOIR administers and interprets Federal immigration laws and regulations through the conduct of Immigration Court proceedings, appellate reviews, and administrative hearings in individual cases. EOIR carries out these responsibilities through its three main components:

- (1) The Office of the Chief Immigration Judge (OCIJ), which oversees all the Immigration Courts and their proceedings throughout the United States;
- (2) The Board of Immigration Appeals (BIA), which hears appeals of decisions made in individual cases by Immigration Judges, DHS District Directors, or other immigration officials; and
- (3) The Office of the Chief Administrative Hearing Officer (OCAHO), which resolves cases concerning employer sanctions, document fraud, and immigration-related employment discrimination.

B. The Office of the Chief Immigration Judge supervises and directs the activities of over 50 Immigration Courts throughout the United States. Immigration Courts are located in federal buildings, private buildings, correctional institutions, and DHS-operated/contracted detention centers. Immigration Judges conduct immigration hearings at these courts, and at designated 'detail' sites, to resolve various immigration matters.

C. In FY2002, nearly 230,000 cases were completed by the immigration courts. Approximately one third of these cases involved detained aliens in DHS custody, of which close to 80% proceeded *pro se* (without legal representation).

D. Although there are various types of immigration proceedings before the court, the vast majority are Removal proceedings, which are scheduled as either Master Calendar or Individual Hearings. In Master Calendar hearings, Immigration Judges are required to ensure that aliens proceeding *pro se* have a clear understanding of the charges against them, their procedural rights during the hearing process, and their options for relief. In addition, Immigration Judges attempt to provide adequate time for *pro se* aliens to assemble facts, documents, and witnesses which may be helpful in the aliens' pursuit of relief

from removal. As a result, the additional time required by detained *pro se* aliens often places a great burden on the court's dockets and reduces the efficiency of the Master Calendar hearing process.

- E. Also known as Legal Rights Presentations, or "Rights Presentations," the Legal Orientation Program (LOP) concept was created in 1989 and pioneered in the early 1990s as the "Justice Efficiency Model" by the Florence Immigrant and Refugee Rights Project in Florence, Arizona, in conjunction with the local Immigration Court. Conducted by non-profit agencies in DHS detention facilities, these programs effectively disseminate legal information and improve access to *pro bono* counsel to detainees while at the same time reducing government costs per detained alien and increasing the efficiency of Immigration Court proceedings. Rights Presentations can also have the effect of reducing behavioral problems at the detention facility. The model has been commended by the U.S. Senate, the U.S. Commission on Immigration Reform, national advocacy groups, the American Bar Association, the DHS and EOIR for the benefits it can provide to all parties involved in Immigration Court proceedings - the detained alien, the government, and the non-profit legal sector.

- F. In 1998, EOIR funded 90-day pilot projects at three DHS Service Processing Centers - Florence (AZ), Port Isabel (TX), and San Pedro (CA) - to implement Rights Presentation programs to detained aliens before their first (initial) Master Calendar Hearing. The EOIR evaluation of the pilot projects concluded that the Rights Presentation programs resulted in faster completions and increased availability of representation to detainees with potentially meritorious claims to relief, and recommended that the government expand them to all INS (DHS) detention facilities.

- G. In FY 2002, Congress appropriated \$1 million to the Department of Justice to carry out "legal orientation programs." These programs were to be used "for non-governmental agencies to provide live presentations to persons in INS [DHS] detention prior to their first hearing before an immigration judge." Presentations were to include essential information about immigration court procedures and the availability of legal remedies to assist detainees in distinguishing between meritorious cases and frivolous cases. EOIR is currently carrying out these programs at six DHS detention sites across the country.

- H. In FY 2004, Congress appropriated \$1 million to the Department of Homeland Security for "legal orientation programs." These funds were recently transferred to EOIR to continue conducting legal orientation programs across the country.

3. STATEMENT OF WORK

- A. To conduct Legal Orientation Training Programs for aliens detained by the DHS in order to measurably:
 - (1) Increase the efficiency of Immigration Court proceedings;
 - (2) Decrease the duration of detention;
 - (3) Increase an individual's ability to make a timely decision about his or her immigration case through receipt of early and accurate legal information

- and orientation; and
- (4) Facilitate access to legal counsel.

B. Legal Orientation Programs shall include the following elements:

- (1) Group orientations;
- (2) Individual orientations;
- (3) Self-help workshops;
- (4) Dissemination of written and taped legal orientation materials; and
- (5) Programs to promote and facilitate *pro bono* representation for detained aliens who seek legal assistance through the legal orientation program.

C. All elements stated above at 3.B shall be performed by one or more on-site trainer(s), who must either be licensed attorneys, BIA Accredited Representatives or legal assistants/paralegals, law students, law school graduates or other trained volunteers working under the direct supervision of such licensed attorneys or Accredited Representatives.

D. At the end of the contract period, the Contractor will provide a report on all services performed and data to assist the Contract Officer Technical Representative (COTR) in evaluating and quantifying the costs, savings, benefits, and other effects of the legal orientation programs on the immigration court process.

E. The specific tasks to be provided are as follows:

- (1) Identify the immigration courts and/or detention facility sites at which legal orientation programs will be conducted.
- (2) Establish plans for program operation for no less than 12 months.
- (3) The trainer(s) will review in advance available information on individuals scheduled to attend the group orientation in order to make necessary preparations for the orientation.
- (4) Provide group orientations to all detained aliens (with reasonable exceptions to be approved by the COTR) regardless of representation status prior to their initial Master Calendar Hearing in the Immigration Court. Additional group orientations may be made to detained aliens prior to subsequent hearings. Group orientations will review the range of rights available and alert individuals to their alternatives or the lack thereof. Group orientations will also include group question and answer periods at the conclusion of each orientation in which the trainer(s) will respond to general concerns of individuals.
- (5) Arrange for suitable space in which to conduct the group orientations, which may include the EOIR Immigration Court or other space within the detention facility. Where a contract detention facility, or state or county jail is involved, the Government will make its best effort to facilitate access to a suitable space.

- (6) Group orientations must be made in the language(s) most appropriate for the majority of detained aliens present at the orientation. The Government will not provide interpreters for the purpose of the group orientation.
- (7) The trainer(s) shall state at the beginning of each group orientation that the views expressed by the trainer(s) do not necessarily represent the views of EOIR, the Department of Justice, or the United States Government. In addition, the trainer(s) shall not, in any manner, either speak, or appear to speak, on behalf of EOIR, the Department of Justice, or the United States Government.
- (8) Within a short period following the group orientation, the trainer(s) will conduct individual orientations when requested by unrepresented individuals to assist them in understanding their legal situations. The trainer(s) may respond to specific concerns/questions of an individual, educating the individual as to the law and applicable procedure.
- (9) The trainer shall explain to all individuals receiving an individual orientation that the trainer(s) is/are not their attorney or representative. In addition, the trainer shall not, in any manner, either speak, or appear to speak, on behalf of EOIR, the Department of Justice, or the United States Government. The trainer shall also obtain written consent from the individual prior to disclosing any confidential detainee information to other parties. This written consent shall state, in effect, that the detained individual understands that the trainer is not their attorney or representative, that the individual has willingly given his/her information, and that the individual authorizes its disclosure to other parties for the purpose of obtaining pro bono/volunteer legal assistance.
- (10) All reasonable efforts must be made by the trainer(s) to conduct the individual orientation in the appropriate language of the detained alien. The Government will not provide interpreters for the purpose of the individual orientation.
- (11) The trainer(s) will distribute appropriate written legal orientation and other relevant and informative materials to individuals, as well as make available any relevant taped materials. All such materials intended for distribution under this agreement must be pre-approved by the COTR. In consultation with the COTR, the Contractor may develop additional appropriate written and/or taped legal orientation materials of a general nature for use at the particular site as it deems necessary.
- (12) The Contractor will also provide 'self-help' training 'workshops' when needed for unrepresented individuals interested in pursuing relief from removal, or subject to special procedures (i.e. Temporary Protected Status, reinstatement of a previous order of removal/deportation, "reasonable fear" or "credible fear" proceedings, and aliens eligible for post-removal order review). The purpose of the self-help workshop is to educate and assist the group in understanding the relevant law and

procedures to be followed in pursuing particular forms of relief, or in understanding special procedures in place, that may apply to their own legal situation.

- (13) The Contractor will also implement local programs to promote and facilitate *pro bono* representation (both at the Immigration Court and BIA level) for detained aliens who request such assistance through the legal orientation programs. This includes working closely with individuals providing *pro bono* representation to detained aliens to facilitate representation, and to improve the delivery of legal services.
- (14) The Contractor may recruit, coordinate and train local *pro bono* attorneys, accredited representatives, law students or law graduates to carry out the above task at 3.E(13). However, the Contractor may not engage in services performed in the supervision or direction of *pro bono* representatives in case-specific legal matters, nor in the indirect preparation of case specific papers.
- (15) To implement each program, the Contractor will coordinate with the COTR and on-site representatives at each program location. On-site representatives may include officials from the DHS, EOIR, or other individuals deemed necessary by the Contractor or the COTR.
- (16) The Contractor will maintain records on the number of group and individual orientations made and self-help training workshops conducted, the number of individuals served (by attending a group orientation as well as by individual orientation), and other data as deemed necessary by the Contractor or the COTR, and will assist the COTR in evaluating the effect of the legal orientation programs upon the following:
 - (1) Access to *pro bono* representation for individuals pursuing claims for relief; and
 - (2) Provision of comprehensive legal services at an appropriate level to all detained individuals at the selected sites;

F. Contract funds are specifically restricted to the services outlined within this Blanket Purchase Agreement (BPA), and may not be used to provide "representation" within the meaning of 8 C.F.R. §1.1(m), and as proscribed by §292 of the Immigration and Nationality Act, 8 USC 1362.

Appendix E

INMATE MAIL

Outgoing mail inspection will be conducted in accordance with the procedure set forth by the contracting agency and applicable Federal law. Outgoing general mail is to be placed in the locked mailbox located in your housing area (legal mail may be sealed before being placed into the mailbox). Be sure you have your full name, ID number, housing assignment and proper return address on your outgoing mail. Inmate mail will be collected daily Monday through Friday by a staff member. (Excluding Holiday's)

Incoming mail will be processed by the mail officer (opened and inspected for money orders or contraband in your presence) and delivered to you in your housing area Monday through Friday. Incoming mail must have a complete return address, your full name, ID number and housing assignment number on it. (Excluding Holiday's)

Books and publications will be received from PUBLISHERS ONLY. Packages WILL NOT BE ACCEPTED unless prior approval is obtained. Unauthorized items received in the mail will be destroyed or returned at the inmate's expense. No explicit publication and pornography material allowed.

INDIGENT SUPPLIES

If you are indigent (having less than \$3.00 in you account for thirty (30) days or more) you may receive indigent supplies (stamps and writing materials) by sending a Request for Services form to the Shift Supervisor. YOUR FORM MUST BE SENT TO THE SHIFT SUPERVISOR NO LATER THAN TUESDAY EVENING IN ORDER FOR YOU TO RECEIVE YOUR SUPPLIES ON THURSDAY. Indigent inmates may mail up to five (5) pieces of mail each week.

Hygiene products (toothpaste, bar of soap) will be distributed as scheduled. Toothbrushes and razors distributed on exchange only.

LEGAL ASSISTANCE

The U. S. Supreme Court in *Bounds v. Smith* determined that a prison meets the access to courts requirement by the use of a library, a person trained in the law, or a combination of both.

CCA retains an attorney to provide legal assistance to inmates housed at CCA. Assistance may be provided by the attorney pursuant to inmates' completion of written request for Attorney Conference form (14-8A or equivalent) which is available at each post location.

The necessary envelopes and postage will be provided to the inmate to forward by mail the request for attorney form to the attorney. Inmates may send form 14-8A to the following address:

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Laredo Processing Center

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Laredo, TX 78040

In addition, it is CCA's policy to encourage informal resolution of inmate complaints. If the issue cannot be informally resolved inmate can request a CCA inmate Grievance form (14-A). This form is available at each post location.

RECREATION PROGRAM

Outdoor recreation facilities and activities are available to all inmates as well as leisure time dayroom activities. Inmates are encouraged to initiate activities and, through the approval and guidance of the staff, assist in the managing of the activity.

The following rules and regulations apply to all inmates participating in any form of recreational activity. The Recreation Supervisor will coordinate all activities and may utilize inmates as program assistants, referees and coaches. All discrepancies will be brought to the attention of a Detention Officer or the Recreation Supervisor. The staff member's decision is final.

Violation of any rule or regulation may result in disciplinary action, expulsion from the activity or recreation area. The following rules include main areas of concern. Additional verbal orders may be given and will be followed.

- 1) "Horseplay" or "tough" play will not be tolerated.
- 2) Do not sit on equipment or the recreational area if it is not specifically designed for such. Abuse of equipment or the recreational area will not be tolerated. Do not attempt to repair broken or damaged equipment; contact a staff member.
- 3) All activities will be conducted in designated areas only.
- 4) Appropriate dress wear must be maintained while in outside recreation.
- 5) Do not block any entrance or exit leading in or out of the building or hallways.
- 6) All safety rules will be adhered to. Safety devices will be used at all times.
- 7) All injuries will be immediately reported to any staff member before leaving the recreational area.
- 8) Inmates with medical restrictions will not be allowed to participate in strenuous physical activities while in recreation.
- 9) During recreation, you are not allowed to grab or touch the perimeter fence.
- 10) At no time are you to contact the outside perimeter officer, any questions or concerns will be addressed to the inside detention officer.

VISITATION

All visitors will be required to present the following legal documents to be eligible for visitation: Resignment (Current legal status, Border Crossing Card, Resident Alien Card, VISA/Passport) U.S. Citizens (Current State Drivers License/Identification Card is required. Any visitor under the age of eighteen (18) must be accompanied by his/her legal guardian (proof required). All

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CONFIDENTIAL
REQUEST FOR ATTORNEY/PARALEGAL CONFERENCE

INMATE/RESIDENT NAME: _____ **DATE:** _____
(Print Name)

Inmate/Resident ID# and Housing Assignment: _____

TYPE OF LEGAL CONCERN: (check one)

- _____ Motion to Proceed In Forma Pauperis
- _____ Motion for Appointment of Counsel
- _____ Petitions for Writs of Habeas Corpus
- _____ Petitions for Post Conviction Relief
- _____ Condition of Confinement/ Civil Rights Complaint (attach grievance)

Briefly describe your legal issues and specify if you have a court imposed deadline and the date:
(Use additional sheets if needed)

The attorney/paralegal services in the above specified areas of law include assistance in preparation of initial legal documents (such as petitions, complaints, motions for the appointment of counsel and motions to proceed in forma pauperis). The attorney/paralegal services do not include typing, photocopying and making court appearances. If your legal matter involves CCA and if in your best interest, the attorney/paralegal should attempt to resolve any dispute with CCA informally before instituting more formal procedures. If the initial pleading involves a 42 USC sec. 1983 or condition of confinement claim, you should have first availed yourself to the Inmate Grievance System because the court will likely dismiss the suit if you failed to exhaust administrative remedies available through the grievance process.

Please note that the attorney/paralegal is retained by and his/her fee is paid by CCA which in no way changes the attorney/paralegal's duty to advise or assist you. The attorney is bound by the disciplinary rules of the Supreme Court of this state in providing legal services to you including confidentiality between you and the attorney/paralegal.

Acknowledged:

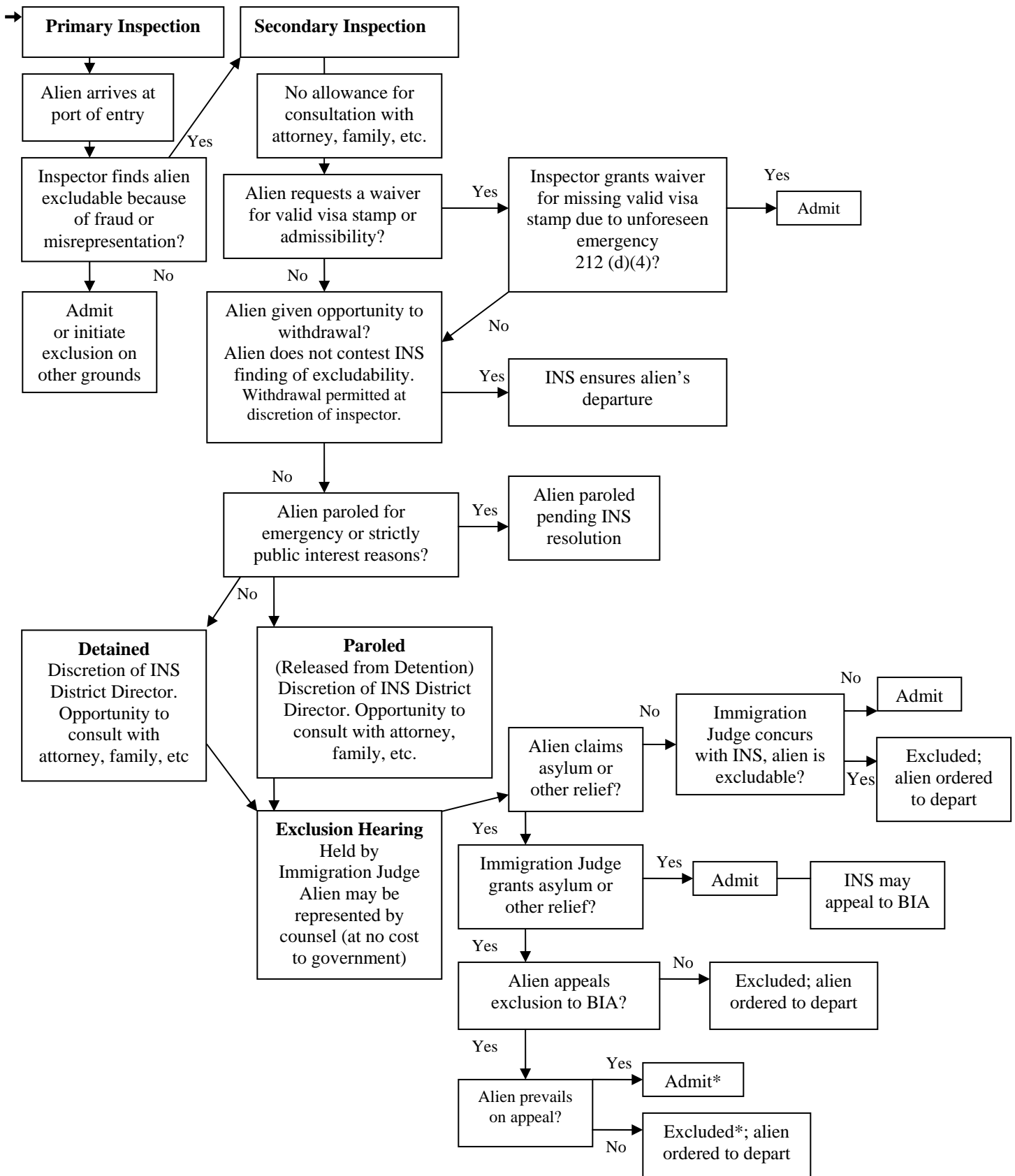
Signature of Inmate/Resident

Date

ATTORNEY'S RESPONSE (May be attached)

Appendix F

The Asylum Application Process for Arriving Aliens Presenting Documents that are Missing, False or Obtained by Misrepresentation Used before April 1, 1997



*Federal court appeal process available after decision from Board of Immigration Review (BIA)

Appendix G Law Library and Related Resources

<http://www.ice.gov/graphics/dro/opsmanual/legal.pdf>

“Facilities holding INS detainees shall permit detainees access to a law library, and provided legal material, facilities, equipment and document copying privileges, and the opportunity to prepare legal documents.”

List of Legal Reference Materials for Detention Facilities:

1. Constitution of the United States of America: Analysis and Interpretation. Updated: Supplements and revised editions are published irregularly.
2. United States Code, Title 8, Aliens and Nationality. Updated: Annual pocket parts
3. Code of Federal Regulations, Title 8, Aliens and Nationality. Updated: Published annually
4. Bender's Immigration and Nationality Act Service. Updated: Monthly
5. Bender's INS Regulation Service. Updated: Monthly
6. Administrative Decisions Under Immigration & Nationality Laws. Board of Immigration Appeals (BIA) decisions consisting of 20 bound volumes and loose-leaf Interim decisions.
7. Immigration Law and Defense, by the National Lawyers Guild. Updated: Annual subscription
8. Immigration Law and Crimes, by the National Immigration Project of the National Lawyers Guild. Updated: Annual subscription
9. Guide for Immigration Advocates. Updated: Published irregularly
10. Country Reports on Human Practices. Submitted by the Department of State to the Committee on Foreign Affairs of the U.S. House of Representatives and the Committee on Foreign Relations of the U.S. Senate. Updated: Published annually in February
11. Human Rights Watch World Report. One bound volume. Updated: Annually
12. UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. Updated: Irregularly
13. Considerations for Asylum Officers Adjudicating Asylum Claims From Women. Updated: Irregularly

14. Immigration and Naturalization Service Basic Law Manual Updated: Irregularly
15. Lawyer's Committee Handbook on Representing Asylum Applicants.
Updated: Irregularly
16. Rights of Prisoners. 2nd edition by Michael B. Mushlin. Updated: Annual pocket parts
17. Federal Habeas Corpus, Practice & Procedure. 2nd Edition by James S. Liebman Updated: Annual pocket parts
18. Federal Civil Judicial Procedure and Rules. Paperback volume. Updated: Published annually
19. United States Code, Title 28. Rules Appellate procedure pamphlets I + II. Updated: Annually
20. Federal Criminal Code and Rules. Paperback volume. Updated: Published annually
21. Criminal Procedure (Hornbook). By LaFave. Updated: Published irregularly
22. Legal Research in a Nutshell. 5th edition by Morris L. Cohen, published 1992.
Updated: Published irregularly
23. Legal Research & Writing: Some Starting Points. 4th edition by William P. Statsky, Updated: Published irregularly
24. Black's Law Dictionary. 1990, latest standard edition, one hardbound volume.
Updated: Published irregularly
25. Spanish-English Law Dictionary, By Solis. 1992. Updated: Published irregularly
26. Directory of Nonprofit Agencies that Assist Persons in Immigration Matters.
Updated: Irregularly
27. Other Translation Dictionaries Depending on the Most Common Languages Spoken by the Detainee Population.
28. Detainee Handbook and Detainee Orientation Materials.
29. Self-Help Materials. Materials provided by outside organization after clearance by District Counsel.
30. Telephone books (Yellow pages) for local areas and nearby metropolitan areas where counsel may be located.

Responses of Alberto R. Gonzales
Nominee to be Attorney General
to the Written Questions of Senator Edward Kennedy

I. HUMAN RIGHTS ISSUES INVOLVED IN THE WAR ON TERRORISM

- 1) **Did you participate in meetings in which specific interrogation techniques were discussed?**

Response: As I noted in my testimony before the Committee, I recall participating in some discussions regarding the manner in which we could question enemy combatant terrorists for information that might save American lives.

- If so:**
- i. Please provide details, including the specific interrogation techniques that were mentioned at such meetings.**
 - ii. Did you raise any objection – either during any such meeting or afterwards – to the use of these techniques? Please provide details.**
- If not:**
- i. Why didn't you raise objections to the use of these techniques?**
 - ii. In retrospect, do you believe you should have raised objections at the time those techniques were discussed?**

Response: I believe that during these discussions, representatives from agencies raised concerns that certain terrorists had information that might save American lives. There was a desire to explore certain methods of questioning these terrorists, but there was concern that nothing be done that would violate the law. I do not have a specific recollection about each individual method of questioning discussed. It is quite likely that not all the methods were discussed since our discussions were not intended to provide approval of certain methods of questioning. I have no specific recollection of raising objections to the use of particular methods of questioning. But my role was not to decide whether or not certain methods of questioning should be adopted as a policy matter; it was for others to decide whether a particular method of eliciting information from terrorists was something to employ under the directives of the President that we should do everything that we lawfully can to win the war against the terrorists. Nor was it my role to make the ultimate decision whether a particular method was legal. That responsibility rested with the Department of Justice. For me to provide details about the method of questioning terrorists mentioned in meetings that I attended would entail discussing classified information, which I am not at liberty to do.

(a) Please identify all notes, memoranda, e-mail, audio-recordings, or documents of any kind which reflect:

- i. The occurrence and substance of such meetings;**

Access to representation also results in a more efficient immigration court process that saves time and money for the government while also benefiting the child.

Question: Federal funding is now used by the Justice Department to provide grants to faith-based and private non-profit organizations to provide legal services to victims of domestic violence and sexual assault. Will you support federal funding to award grants to non-profit organizations to provide legal representation to these most vulnerable children? If not, why shouldn't we provide the same authority to award grants to nonprofit organizations so they may represent unaccompanied immigrant minors.

If you do not support such funding, what changes will you propose to ensure that the best interests of these children are fully protected and respected?

Response: The plight of unaccompanied minors who are sent to the United States is an extraordinarily heart-rending issue. Many of these abandoned children arrive in the United States after having suffered abuse, neglect, and violence. If confirmed, I would carefully review and consider any proposal, whether regulatory or legislative in nature, to ensure that unaccompanied minors receive the services they need and are not further victimized after they arrive in the United States.

VII. LEGAL ORIENTATION PROGRAMS

In 2002, Congress appropriated \$ 1 million for legal orientation programs in order to increase the efficiency and effectiveness of immigration removal proceedings. The programs are funded through appropriations to DHS, which are then transferred to EOIR.

Legal orientation presentations provide immigration detainees with essential information about immigration court procedures and the availability of legal remedies. The programs help identify immigration detainees with meritorious cases that can be referred to legal assistance agencies, at no cost to the government. The programs also help convince detainees without relief not to challenge their removal, thereby needlessly protracting their immigration proceedings and deportation. These programs have resulted in greater judicial efficiency, fewer detention expenses, and greater access for aliens to legal information. EOIR has calculated that these programs result in an annual saving of approximately \$8 million dollars by reducing detention by more than 4 days per alien in sites with these programs. In its first full year, these programs reached 17,000 detainees, comprising approximately 20% of the detention proceedings completed by immigration judges in fiscal year 2003. Despite the benefits and efficiencies generated by the programs, DHS failed to transfer the FY 2003 appropriations to EOIR, and I understand may not transfer the funding for fiscal year 2005.

Question: As Attorney General, what will you do to ensure that DHS transfers the \$2 million owed to EOIR for these programs? What will you do to increase funding

for these highly successful programs so they reach even greater numbers of detainees?

Response: If confirmed, I would work with my colleagues at the Department of Homeland Security to ensure that any money that is owed to EOIR is transferred and to determine the extent to which funding may be increased in future years.

VIII. USE OF SECRET EVIDENCE

In the past, the Department of Justice has used classified evidence in immigration proceedings, and not made it available to the defendant and or to defense counsel. In some cases where classified evidence was used to deport an individual, it was later discovered that the evidence was incorrect or discredited.

Question: Will the Department of Justice again use classified evidence in immigration proceedings? What step will you take to avoid the types of mistakes made in the past?

Response: Current federal law specifically permits the use of classified evidence in immigration proceedings with respect to detention decisions and decisions on applications for various forms of immigration relief, such as asylum or cancellation of removal. However, my understanding is that this is done only rarely and that immigration judges have not used classified evidence for purposes of determining whether or not an alien is deportable. I know that the issues relating to the use of classified evidence in immigration proceedings have been the subject of considerable attention both in Congress and among the affected federal agencies in the past, and, if confirmed, I would conduct a review of the Department's policies in this regard.

CIVIL RIGHTS

I. Voting Rights Act

The Voting Rights Act is critical to ensuring ballot access for all Americans, regardless of race, ethnicity or proficiency in English. Private citizens can enforce the Act's non-discrimination provisions, but Justice Department enforcement is critical to its effectiveness. Unfortunately, in recent years the Department has cut back its enforcement actions. In 2004, the Civil Rights Division did not file a single case alleging racial or ethnic discrimination against minority voters. In 2003, the Division filed only one such case, and only two in 2002. That is not a satisfactory record, given the widespread discrimination against minority voters in state, local and federal elections across the country.

1. During your hearing, you stated that you believe strongly in protecting voting rights. Will you commit that if you are confirmed as Attorney General, the Department will vigorously enforce Section 2 of the Voting Rights Act while also maintaining its role in enforcing other voting and civil rights laws?