



A Refutation of EOIR Analyses of the Legal Orientation Program for Detained Adults¹

Acacia Center for Justice

March 21, 2025

INTRODUCTION

The Legal Orientation Program for Detained Adults (LOP) was established in 2003 under the Bush administration as a pro se² support program that gives people in immigration detention the legal information they need to represent themselves in court. Since its inception, studies have consistently demonstrated the cost effectiveness of LOP.³ Immigration judges have long recognized LOP's efficacy in educating respondents about their legal options and diverting them from applying for relief for which they are ineligible and reducing the incidence of frivolous filings.⁴ DHS Immigration and Customs Enforcement (ICE) has also credited the LOP with "improv[ing] the efficiency of immigration court proceedings by increasing access to information ... for individuals in proceedings."⁵

¹ The Acacia Center for Justice thanks Ingrid Eagly (Faculty of Law, UCLA), David Hausman (Faculty of Law, UC-Berkeley) and Emily Ryo (Faculty of Law, Duke University) for their advice which informed the preparation of this memo. Members of the Acacia REDA unit who contributed to this memo include Philip Kretsedemas, Andrew Powell, and Michael Danielson. An abbreviated version of this memo is available on request.

² Pro se refers to an individual who represents themselves in legal proceedings, acting on their own behalf without an attorney.

³ Possibly the earliest study is a 1992 report by the Government Accountability Office (GAO) which documented the positive impact of legal orientation services on case processing efficiency for several detention centers. See pages 48-50, GAO, Immigration Control: Immigration Policies Affect INS Detention Efforts, June 1992. A report by the Vera Institute of Justice cites this GAO study in its chronology of LOP evaluations, along with several unpublished pilot studies of LOP that were conducted by the DOJ/EOIR in 1998 and 2002, and a study by Norwich University (the first LOP contractor). See pages 7-8, 11 in Vera Institute of Justice, Legal Orientation Program, Evaluation and Outcome and Measurement Report: Phase II, May 2008.

⁴ See pages 13 and 66-68 in Vera Institute of Justice, Legal Orientation Program, Evaluation and Outcome and Measurement Report: Phase II, May 2008; and, The Roundtable of Former Immigration Judges, January 30, 2025.

⁵ See page 1, Acting Assistant Secretary for Custody Management Monica Burke, "Updated Guidance: ERO Support of the US DOJ/EOIR Legal Orientation Program for Detained Non-Citizens in ICE Detention Facilities," U.S. Immigration and Customs Enforcement (ICE), September 28, 2021. Also see pages 3-6 in, U.S. Immigration and Customs Enforcement (ICE) Access to Due Process, FY 2023 Report to Congress, February 20, 2024; U.S. Immigration and Customs Enforcement (ICE) Access to Due Process, FY 2022 Report to Congress, January 4, 2023.

EOIR Acting Director Sirce Owen, in a recent policy memorandum (PM 25-15), erroneously cited a 2021 EOIR study⁶ to conclude that LOP is “wasteful.”⁷ **However, that is not what the 2021 study concluded.** Instead, the study, which was only released publicly after the PM was issued, closes with recommendations to improve data collection and to conduct further research.⁸ The EOIR PM also relies on an earlier report from 2018, which uses a research design that does not allow it to make casual statements about the impact of LOP services on cost differences between LOP and non-LOP respondents.⁹

In fact, neither report cited by the EOIR PM provides causal evidence to support its claims, and the 2021 study explicitly states this. Moreover, the way these reports go about measuring LOP costs, case times, and detention stays is methodologically flawed, as detailed below.

The most recent and methodologically rigorous analysis of LOP case times comes from a 2018 Vera Institute of Justice report, which concludes that **LOP participation leads to faster case completion times**.¹⁰

The findings of the Vera Institute report, as well as findings from an earlier 2008 report by the Vera Institute, provide evidence that LOP is especially effective in reducing processing times for the kinds of cases that are driving the current court backlog, including: asylum filings, cases involving respondents who are not eligible for relief (many of whom file no applications for relief), and cases involving both released and detained respondents that have been pending for relatively long periods of time (ranging from a matter of months, to two or more years).

RECOMMENDATIONS

The contents of this memo support the following recommendations.

1. Acacia concurs with the closing recommendations of the 2021 EOIR report, which observes that **before any conclusive decisions can be made about the effectiveness or cost efficiency of LOP, it is necessary to conduct additional research**, using more rigorous methods that are supported by enhancements to LOP contractor data collection.
2. Any further research on LOP programs’ effectiveness and cost efficiency should
 - a. **focus on the impact of LOP participation using appropriate measures of efficiency and effectiveness,**
 - b. **deploy causal models that control for relevant intervening variables and assess LOP impact by comparing “like” cases, and**
 - c. **include cases of all lengths in its sampling framework.**

⁶ Executive Office for Immigration Review, Planning, Analysis, and Statistical Division (PASD), “Legal Orientation Program Cost Evaluation for FY 2014 through FY 2019,” May 7, 2021.

⁷ See page 2, Acting Director Sirce Owen, “Office of Legal Access Programs” Executive Office of Immigration Review (EOIR), PM 25-15, January 31, 2025.

⁸ See pages 44-45 in EOIR, FY 2014 to FY 2019, Legal Orientation Program Cost Evaluation, May 2, 2021.

⁹ The 2018 report is discussed in footnote 29 on page 30 of EOIR FY 2014 to FY 2019, Legal Orientation Program Cost Evaluation, May 2, 2021. For a full copy of the 2018 report, see EOIR, LOP Cohort Analysis, September 5, 2018.

¹⁰ Vera Institute of Justice, “LOP Case Time Analysis, Fiscal Years 2013-2017” Sept. 14, 2018.

3. **Any further research should be conducted using a transparent data sharing arrangement** that allows both EOIR and the LOP contractor to access all data used for the analysis and to participate in the review of research design and findings; as well as allowing for the participation of third-party reviewers, at the government's discretion.

The main points of this memo are summarized below, followed by a more detailed treatment of each point that compares the methodology and findings of the EOIR reports to the reports issued by the Vera Institute (the former LOP contractor).

Finally, please note that this memo focuses on the methodological flaws of the 2021 EOIR report. A few observations on the limitations and flaws of EOIR's 2018 and 2019 reports on LOP are also cataloged in an appendix at the end of this memo.

MAIN POINTS

1. The 2021 EOIR report acknowledges that **none of the EOIR analyses of LOP have established a causal relationship between LOP and government spending** on detention or the immigration courts. The only recent evaluation of LOP that has presented a robust, causal analysis is the 2018 Vera report on LOP case times.¹¹
2. The 2018 EOIR report yielded unreliable measures of LOP case times because it **did not control for intervening variables and did not compare "like" cases**. Meanwhile, the 2021 EOIR report completely abandons the analysis of case times and similarly does not attempt to control for intervening variables, **which leaves the 2018 Vera Institute report as the most robust recent analysis of the impact of LOP on case times**.¹²
Moreover, the Vera Institute is the only entity, besides EOIR, that has had access to the data that is necessary to conduct an analysis.
3. **The 2018 Vera Institute report's treatment of pending cases allowed it to highlight an important aspect of LOP case processing efficiency that was overlooked by the EOIR studies.** Vera used a multivariate, explanatory model that accounted for the total amount of time all pending cases had been open to date. Using this methodology, the Vera report was able to show that LOP cases reached the 50% closure mark three times faster than non-LOP cases. In other words, half of all LOP cases closed by 140 days, while it took non-LOP cases more than three times as long (421 days) to reach the same mark (amounting to average case-time savings of over 250 days per case for LOP cases).¹³
4. **Both the Vera Institute and EOIR reports have shown that LOP has been successful in reducing in absentia rates for people released from detention.** Even so, recent EOIR reports fail to

¹¹ In 2008 and in compliance with contract requirements, the Vera Institute undertook a robust program evaluation to assess the program, determine its impact, and make recommendations for program improvements. No evaluation of this scope and quality has been supported or completed since that time. See, Vera Institute of Justice, Legal Orientation Program, Evaluation and Outcome and Measurement Report: Phase II, May 2008.

¹² Notably, while the Vera 2018 analysis is the most robust recent analysis that can make causal claims of the impact of LOP participation on case times, there are arguably better indicators of efficiency other than case times — which are affected by many external factors such as system backlogs.

¹³ See page 16, Vera Institute of Justice, "LOP Case Time Analysis, Fiscal Years 2013-2017" Sept. 14, 2018.

acknowledge that reduction of in absentia rates is one of EOIR's longstanding goals for improving immigration court proceedings.¹⁴ The 2021 and 2018 EOIR reports also inappropriately include cases with in absentia orders in their estimates. This is problematic because cases with in absentia orders are shorter, meaning that the success of LOP in ensuring participants continue to appear at their hearings, all else equal, increases case times. But all else is not equal, and reducing case times by increasing in absentia rates should not be viewed as a success.

5. The **2021 EOIR Report does not account for the non-random distribution of LOP facilities in its assessment of detention costs and stays.** In particular, the report does not account for the fact that LOP is typically assigned to larger facilities with acute legal support needs, and that there are many attributes of these facilities that are beyond the control of LOP providers, which can distort cost efficiency estimates if not taken into account.

DETAILED TREATMENT

1. The 2021 EOIR report acknowledges that none of the EOIR analyses of LOP have established a causal relationship between LOP and effectiveness or cost efficiency. In contrast, the only recent causal analysis of LOP was the 2018 Vera Institute report on LOP case times.

The 2021 EOIR report compares LOP to non-LOP hearing lengths and detention time using descriptive statistics that **do not allow it to determine whether LOP is the cause** of longer times, and by extension purported cost differences. The 2021 report acknowledges that this same limitation applies to Phases I and II of the LOP Cohort Analysis that were issued by EOIR in 2018 and 2019.

Here is a quote from the Conclusions on page 30 of the 2021 EOIR report:

"... these costs **do not mean that LOP programs cause higher costs** since their programs are only one of many unmeasured/unknown variables impacting the length of detention." The report goes on to observe, in a footnote: "As with previous Phases I and II of the LOP Cohort Analysis, the LOP programs **are not considered the causal driver** of the observed differences between LOP and Non-LOP respondents. Similarly in this analysis, any costs assigned to the observed differences in respondents **may not be due to the LOP.**"¹⁵

The 2018 Vera Institute report makes a similar point as EOIR about the limitations of descriptive data. The Vera Institute report begins its comparison of LOP and non-LOP case times with descriptive statistics

¹⁴ The 2008 Vera Institute evaluation notes that "reducing in absentia rates remains a main area of concern for both EOIR, which identifies this as a goal in its 2005-2010 Strategic Plan, as well as ICE, which is charged with the resource-intensive task of apprehending persons who fail to appear for their hearings. See page 55 in Vera Institute of Justice, Legal Orientation Program, Evaluation and Outcome and Measurement Report: Phase II, May 2008; citing. U.S. Department of Justice, Executive Office for Immigration Review, Fiscal Years 2005-2010 Strategic Plan, September 2004.

¹⁵ See page 30 and footnote, 29 in EOIR, FY 2014 to FY 2019, Legal Orientation Program Cost Evaluation, May 7, 2021. The Phase 1 LOP Cohort Analysis referenced in this footnote is the 2018 EOIR report that was also cited in the January 2025 memo that described the LOP as "wasteful." The Phase II Cohort analysis was not cited by the January 2025, EOIR memo.

showing that LOP cases complete more quickly than most types of non-LOP cases,¹⁶ and notes that this data does not prove that LOP is the cause of these faster case times. But unlike the EOIR reports, the **Vera Institute report goes on to provide a multivariate regression analysis that isolates the causal effect of LOP.**

2. The 2018 EOIR report yielded unreliable measures of LOP impact on case times because it did not control for intervening variables. The 2021 EOIR report, on the other hand, abandons the analysis of case times, which leaves the 2018 Vera Institute report as the last word on LOP case times.

All the EOIR reports lump together cases with very different characteristics. The 2021 EOIR report notes, for example, that factors like “age, gender, nationality, language spoken,” “those with reasonable or credible fear justification,” or controls for a “specific court backlog” were “very difficult, if not impossible, to accurately project.”¹⁷ The 2018 EOIR report also neglects to control for intervening variables in its case time analysis, in addition to the fact that it does not use statistics that allow it to make causal statements.¹⁸

The Vera Institute reports, in contrast, controlled for these and other intervening variables and used a research design that compared “like” cases.¹⁹

The 2008 Vera Institute report, for example, showed that one of the greatest differences in processing times for LOP and non-LOP cases was for respondents who were without representation and were seeking relief via I-589 asylum filings. For these respondents, LOP cases completed 24 days faster than non-LOP cases.²⁰ This report also showed that LOP respondents who filed no applications for relief completed twice as fast as non-LOP respondents (with LOP respondents completing in 5 days instead of 10 for non-LOP respondents).²¹

These findings should also be considered with respect to another LOP program goal, which is **to divert LOP respondents from applying for relief for which they are ineligible.**²² On one hand, this means that LOP respondents who are eligible for I-589 relief will complete their applications faster because of the guidance they receive from LOP services. But on the other hand, respondents who are not eligible for relief will learn this sooner than non-LOP respondents and will be tracked into removal proceedings or

¹⁶ See pages 8-9, Vera Institute of Justice, “LOP Case Time Analysis, Fiscal Years 2013-2017” Sept. 14, 2018

¹⁷ See page 14 in EOIR, Planning Analysis and Statistics Division (PASD), FY 2014 to FY 2019, Legal Orientation Program Cost Evaluation, May 7, 2021.

¹⁸ The 2018 report acknowledged that variables such as, **“hearing location, custody status, and other factors were found to be statistically significant for certain findings,”** but it did not control for these variables in the data that it presented on LOP case times. Moreover, the report only provided data on case outcomes, by relief type, for LOP and non-LOP respondents, but **provided no data on how LOP and non-LOP case times varied, by relief type.** See pages 7 and 10-17 in EOIR, LOP Cohort Analysis, September 5, 2018. See footnote 10 and accompanying text in the body of the memo for the assessment, provided in the 2021 EOIR report, on the inability of researchers to draw causal inferences from the findings of the 2018 report.

¹⁹ Although the 2008 Vera report disaggregates its data by case attributes that allow it to compare “like” cases, it bears noting that this report did not use a statistical design that would allow it to make causal statements. Vera’s 2018 report is the only one that presents a causal analysis of LOP case times. Even so, the findings of the 2018 report are consistent with the findings of the 2008 report.

²⁰ See pages 49-50 in Vera Institute of Justice, Legal Orientation Program, Evaluation and Outcome and Outcome Measurement Report, May 2008.

²¹ Ibid.

²² See pages 13, 37 and 60 in Vera Institute of Justice, Legal Orientation Program, Evaluation and Outcome and Outcome Measurement Report, May 2008.

into another, more appropriate, relief option. The role that LOP plays in educating respondents about relief eligibility is one of the main reasons why immigration judges have such praiseworthy things to say about the program, including endorsements of LOP as recently as January of this year.²³ The educational and diversionary effect of LOP services takes on added significance when considering the size of the current immigration court backlog, which is being fueled, in large part, by defensive asylum applications.

It bears emphasizing that **these LOP case processing efficiencies only become visible if researchers are comparing “like” cases**, which is what the EOIR reports fail to do.

The 2018 Vera Institute report provides an even more rigorous analysis of “like” cases than its 2008 report; controlling for most of the intervening variables that the 2021 EOIR report described as “impossible to accurately project” and found that there was a **48.8% higher probability of an LOP case completing (compared to a non-LOP case) on any given day.**²⁴

The 2018 Vera Institute report was able to arrive at this finding because it disaggregated LOP and non-LOP cases according to the type of relief application sought, representation status, and custody status at the time of completion, as well as controlling for language fluency of respondents, whether the respondent was the lead individual on a case, whether the case was coded as a scheduling priority, Notice to Appear (NTA) charge, fiscal year of NTA receipt, and initial hearing location (among other factors).

3. The 2018 Vera Institute report’s treatment of pending cases allowed it to highlight an important aspect of LOP case processing efficiency that was overlooked by the EOIR studies.

EOIR’s 2018 Phase I analysis of LOP included pending and completed cases in its analysis. But unlike the 2018 Vera Institute report, EOIR did not account for the length of time that a pending case had been open to date.²⁵ Consequently, the EOIR analysis was biased toward cases with shorter completion times.

In contrast, the 2018 Vera Institute report conducted a survival analysis that measured the duration of time elapsed from case initiation to case completion.²⁶ The survival analysis estimated case times by including the total length of time that all cases, including pending cases, had been open to date and used a Cox proportional hazards model to estimate the likely completion time for pending cases (while controlling for factors that explained case completions for other cases).

Whereas the 2018 EOIR report found that LOP case times were typically 50-60% longer than non-LOP case times,²⁷ **the Vera Institute report found that about half of the LOP cases in its sample completed three times more quickly than non-LOP cases**, with LOP cases of longer durations closing on average

²³ See pages 13 and 66-68 in Vera Institute of Justice, Legal Orientation Program, Evaluation and Outcome and Outcome Measurement Report, May 2008 and the endorsement of LOP by The Roundtable of Former Immigration Judges, January 30, 2025.

²⁴ See page 9, Vera Institute of Justice, “LOP Case Time Analysis, Fiscal Years 2013-2017” Sept. 14, 2018.

²⁵ See introductory memo and pages 2-3, Vera Institute of Justice, “LOP Case Time Analysis, Fiscal Years 2013-2017” Sept. 14, 2018.

²⁶ See pages 2-3 and 9-13 in, Vera Institute of Justice, “LOP Case Time Analysis, Fiscal Years 2013-2017” Sept. 14, 2018.

²⁷ See pages 11-15 in EOIR, LOP Cohort Analysis, September 5, 2018.

more than 250 days sooner than non-LOP cases of long durations.²⁸

These data show that LOP and non-LOP cases began to close more slowly after reaching the 50% closure mark. But even after accounting for this slower closure rate, the case time value-add of LOP is still very pronounced and actually increases the longer that cases remain pending.

For example, 60% of all LOP cases in the sample closed by the 730-day mark, compared to 1,460 days for non-LOP cases.²⁹ At this point, LOP cases were closing twice as fast as non-LOP cases (whereas they had been closing three times as fast as they approached 50% closure). Even so, case time savings for LOP cases increased significantly as they approached the 60% closure mark (with these cases closing two years sooner than comparable non-LOP cases). Obviously, a two-year difference in case completion times is a major savings for the government.

The 2021 EOIR Report's Treatment of Pending Cases

Keeping the above points in mind, it is important to emphasize that **the 2021 EOIR report abandons the analysis of case times** in favor of an analysis of hearing durations, which vary by a matter of minutes and hours, as opposed to case times that vary by a matter of weeks, months and years.³⁰ Hence, **the 2021 EOIR report provides no evidence to counter the findings of the 2018 Vera report's case time analysis.**

The 2021 EOIR report also provides a truncated analysis of pending cases. The analysis in the body of the report focused, exclusively, on already-completed cases (which biases the data toward cases that complete most quickly and are thus not representative of all cases). The only kinds of pending cases that the report factors into its analysis are those of released respondents, which are presented in an appendix at the end of the report, separate from its core findings.³¹

The EOIR report justified its omission of detained-pending cases on the grounds that they only composed about 8% of detained cases.³² Nevertheless, this is still an important omission, because **detained-pending cases are more costly to the government than released-pending cases.**³³ The time

²⁸ The report found that half of all LOP cases in its sample closed at around 140 days compared to over 400 days for comparable non-LOP cases. See page 16, Vera Institute of Justice, "LOP Case Time Analysis, Fiscal Years 2013-2017" Sept. 14, 2018.

²⁹ To corroborate this interpretation, the reader should review Figure 4 on page 16 of the Vera report, focusing on black CIF curves (dashed line for LOP and solid line for non-LOP). For each, trace the point where each line meets the 60% mark (see horizontal lines) and trace the vertical, cross-hatched lines downward to "days since NTA." See page 16, Vera Institute of Justice, "LOP Case Time Analysis, Fiscal Years 2013-2017" Sept. 14, 2018.

³⁰ See pages 14-18 in FY 2014 to FY 2019, Legal Orientation Program Cost Evaluation, May 7, 2021.

³¹ See pages 63-68 in, EOIR FY 2014 to FY 2019, Legal Orientation Program Cost Evaluation, May 7, 2021.

³² The report observes that 92% of detained cases were completing within one year of receiving an NTA (Notice to Appear in court), with the implication being that the cases pending for more than a year totaled about 8% of all detained cases (at the time of the analysis). See page 18, EOIR FY 2014 to FY 2019, Legal Orientation Program Cost Evaluation, May 7, 2021.

³³ The EOIR report's data on the "added" LOP costs for hearings shows, for example, that detained cases (at approximately \$10 million for the entire period of study) were about 5 times more expensive than released cases (which totaled a little over \$2 million for the same period of time); see page 41 (Table 27) and page 42 (Table 28) in EOIR, FY 2014 to FY 2019, Legal Orientation Program Cost Evaluation, May 7, 2021; and this 5 to 1 ratio of costs for detained versus released respondents does not even account for the added detention stay costs of detained respondents. It is also important to emphasize that the 2021 EOIR analysis does not account for cost savings due to LOP case processing efficiencies that have been documented by the Vera reports. As will be explained later in this

frame for the 2021 EOIR report also ends at the point in time (FY 2019) when the immigration backlog was beginning a period of rapid growth that continues to this day.

The EOIR report's estimate of cost differentials related to court hearing times also pales in comparison to the Vera Institute's estimates of savings from LOP case processing efficiencies. The EOIR 2021 report found that LOP hearing frequencies and times were slightly larger than they were for non-LOP respondents, with total "added" costs for LOP proceedings ranging between \$1.5 to 2.5 million per year.³⁴

In contrast, the 2008 Vera Institute report has shown, using very conservative pricing estimates, that **the reduction in case times resulting from LOP services was saving the government over ten million dollars per year.**³⁵ If the findings of the 2018 Vera Institute report were extended to the present day, we would expect to see cost-savings on a similar scale.

So, by choosing not to study case processing times, and by truncating its analysis of pending cases, **the 2021 EOIR report neglects to explain a much larger and more significant relationship between the length of proceedings and government spending.** This is why the 2021 EOIR report's analysis of hearing duration cannot be used to assess the case-time and cost-saving impact that LOP is having on the growing case backlog.

4. Both Vera Institute reports have shown that LOP is successful in reducing in absentia rates for the people it serves. In contrast, the 2018 and 2021 EOIR reports do not provide a comparative analysis of in absentia rates, nor do they separate-out cases with in absentia orders from their cost estimates.

In its 2008 report, Vera shows that **released LOP respondents have lower rates of in absentia removal orders than non-LOP respondents.**³⁶ The report also emphasizes that legal representation and access to information through programs like LOP help reduce in absentia removal orders for respondents of all custody types.³⁷

The 2008 and 2018 Vera Institute analyses found that cases for people who were removed in absentia had truncated case times and therefore treated them separately in their analyses. It also bears noting that in absentia orders do not always result in the quick termination of a case. For example, released respondents who are more likely to have representation often file Motions to Reopen, in response to in

memo, EOIR's cost assessment of LOP detention stays also does not account for factors that are beyond the ability of LOP services to control.

³⁴ For the data used to estimate annual "added" proceeding costs for LOP see page 41 (Table 27) and page 42 (Table 28) in, EOIR, FY 2014 to FY 2019, Legal Orientation Program Cost Evaluation, May 2, 2021.

³⁵ See pages 50-53 in Vera Institute of Justice, Legal Orientation Program, Evaluation and Outcome and Outcome Measurement Report, May 2008. Because the Vera was not granted access to government fiscal data it was only able to provide rough estimates of likely savings.

³⁶ The overall in absentia rate for LOP released respondents (including all case types) was 56% compared to 63% for non-LOP released respondents. See page 57 in Vera Institute of Justice, Legal Orientation Program, Evaluation and Outcome and Outcome Measurement Report, May 2008.

³⁷ See footnote 31. In absentia removals for detained respondents are much less frequent than for released respondents, and typically, have more to do with change of venue issues or changes to scheduling and hearing protocols rather than abscondment. It bears emphasizing, however, that the in absentia metrics included in the 2008 Vera report are focused on released respondents. The analysis of in absentia rates in the 2018 Vera report includes all custody types but does not disaggregate released and detained respondents. See footnote 34.

absentia orders, that extend the life of a case.³⁸ This is why the 2018 Vera Institute report performed a separate case time analysis for LOP and non-LOP respondents who received in absentia removal orders, which confirmed that LOP respondents received fewer in absentia removal orders, but that the cases of non-LOP respondents who received these orders completed slightly faster (within a margin of 3%).³⁹

In contrast, **the 2018 and 2021 EOIR reports did not account for cases of people who received in absentia removal orders.**⁴⁰ Since fewer LOP participants received in absentia orders, the inclusion of those cases in estimates of case times and detention stays, alongside other types of cases, effectively punished LOP for meeting one of its main programmatic goals: encouraging timely participation in court hearings and in meeting filing deadlines.

5. The 2021 EOIR Report does not account for the non-random distribution of LOP facilities nor the effect of ICE's pricing structure in its assessment of detention costs and stays.

Research shows that length of detention stay varies significantly by detention facility and hearing location, and that facility characteristics such as operator type and location influence how long individuals are detained in those facilities; specifically, detention facilities outside of urban areas had significantly longer detention stays.⁴¹ Other studies have shown that case processing times and lengths of continuances granted vary by court location.⁴²

This is important as LOP generally serves larger detention facilities⁴³ that are in more remote locations, that are serviced by courts with the largest backlogs.⁴⁴ It is also important to emphasize that the 2008 and 2018 Vera Institute analyses both controlled for case hearing locations, unlike the 2018 and 2021 EOIR studies which failed to account for detention location or hearing location code in their analyses.

³⁸ Researchers have shown that about 15% of cases removed in absentia are re-opened. See pages 12-13 in Ingrid Eagly and Steven Shafer, Measuring In Absentia Removal in Immigration Court, American Immigration Council Special Report, January 2021. It is also bears noting that most of these motions are filed by released respondents, considering that in absentia removals are concentrated among released respondents, that released respondents are more likely to have representation than detained respondents, and that there is a positive relationship between representation status and likelihood of filing a Motion to Reopen.

³⁹ See pages 14-16, Vera Institute of Justice, "LOP Case Time Analysis, Fiscal Years 2013-2017" Sept. 14, 2018.

⁴⁰ Since there is no discussion of how in absentia orders are treated anywhere in the 2018 and 2021 reports, observers must conclude that cases with in absentia orders were counted among all of the completed cases that these reports used, respectively, to estimate case times and detention stays. The 2019 EOIR report does, however, exclude cases with in absentia orders from its analysis, but it also does not provide an analysis of case times. Page 11, EOIR, LOP Cohort Analysis Phase II, January 29, 2019.

⁴¹ Ingrid Eagly and Steven Shafer, Detained Immigration Courts. Virginia Law Rev. 110 (2024): 691; Emily Ryo & Ian Peacock, A National Study of Immigration Detention in the United States, 92 Southern California Law Review, 1, 2 (2018).

⁴² Ingrid Eagly and Steven Shafer, A National Study of Access to Counsel in Immigration Court. U. Pa. L. Rev. 164 (2015); David Hausman & Jayashri Srikantiah, Time, Due Process, and Representation: An Empirical and Legal Analysis of Continuances in Immigration Court, 84 Fordham Law Review.1823, 1827 (2016).

⁴³ For example, in 2019, the LOP served 8 of the top 10 largest facilities in terms of average daily population from ICE's 2019 detention statistics report. Those 9 facilities are: Stewart, South Texas ICE Processing Center, Adelanto, Eloy, Tacoma, Port Isabel, La Palma, and LaSalle.

⁴⁴ According to the Transactional Records Access Clearinghouse's Immigration Backlog Tool, as of December 2024, 9 of the 10 courts with the largest backlog of detained cases are served by the LOP. See <https://tracreports.org/phptools/immigration/backlog/>. Those 9 courts are: Pearsall, Conroe, Jena, Lumpkin, El Paso EPD, Miami – Krome, Elizabeth, Otay Mesa, and Adelanto.

Finally, EOIR's estimate of the additional cost of LOP, based on participants' lengths of stay in detention, assumes that ICE detention costs are directly tied to the daily number of individuals in custody. However, ICE's annual budget overview states that many facilities have guaranteed minimum bed capacities, meaning ICE is contractually required to pay for a set number of detention beds per month, regardless of occupancy. ICE's 2019 Budget Overview shows that all the largest facilities (with 1,000 bed or more) that had fixed-bed pricing arrangements were facilities that received LOP services.⁴⁵

Government payments to these LOP facilities were not sensitive to the actual length of detention stays for LOP and non-LOP participants, because these facilities received payments based on a fixed bed-count that was not affected by the actual number of beds that were occupied at any given point in time. ICE's 2019 Budget Overview also shows that utilization rates for some of these LOP facilities fell below ICE's recommended target rate of 85-90% (which means that these facilities were receiving government payments based on bed counts that were significantly greater than the actual number of beds occupied). Please keep in mind that this example of overspending is due to the pricing structure for these detention facilities and has nothing to do with the cost-efficiency of LOP.⁴⁶

CLOSING REMARKS ON DATA TRANSPARENCY AND REPRODUCIBILITY OF THE EOIR ANALYSIS

As we recommend above, further research on LOP is needed and will require more effective and transparent data sharing arrangements between EOIR and LOP contractors.

Both EOIR and LOP contractors agree that research findings should be reproducible.⁴⁷ It has not been possible to replicate the findings of EOIR's 2018 and 2021 evaluations of LOP, however, because EOIR has not made this data available to other parties.

It is understandable that EOIR would choose not to share LOP and unredacted data from the EOIR administrative Case database with third parties, since this is sensitive data that is fully owned by the government. This is also why LOP contractors cannot share any of the data they collect with third parties without the expressed permission of EOIR. We emphasize that any data sharing should continue to abide by robust data security and privacy protections.

These restrictions on data sharing also explain why the only parties that have been able to conduct evaluations of LOP are EOIR and LOP contractors, relying heavily on LOP service data that is collected by

⁴⁵ These facilities include Adelanto, La Salle, Northwest Detention Center, Southwest Texas Detention Center and Stewart. See page 138 in DHS Immigration and Customs Enforcement (ICE) Budget Overview, FY 2019 Congressional Justification.

⁴⁶ LaSalle for example had a fixed pricing arrangement based on a guaranteed minimum of 1170 beds and a 72% utilization rate for FY 2017. There were also several LOP facilities with smaller guaranteed minimum bed counts that had much lower utilization rates. Prairieland for example, had a fixed pricing arrangement based on a guaranteed minimum of 525 beds and a utilization rate of just 46% for FY 2017. See page 138 in DHS Immigration and Customs Enforcement (ICE) Budget Overview, FY 2019 Congressional Justification.

⁴⁷ The 2021 EOIR report describes criteria for reproducibility that informed the research design for the study but decline to address the matter of data sharing as an integral criterion for replicability (or reproducibility). See page 14, EOIR, FY 2014 to FY 2019, Legal Orientation Program Cost Evaluation, May 2, 2021.

LOP contractors.

As this memo has shown, however, evaluations and analyses of LOP conducted by EOIR and LOP contractors have produced very different findings and used very different methodologies and measurement techniques. This is why it is important, for the sake of guaranteeing the integrity, coherence and replicability of any future research on LOP, that both EOIR and the LOP contractor be able to access the same data and participate in the review of the research design and findings resulting from any such study.

This proposal is premised on the understanding that a) data transparency and sharing arrangements are necessary to ensure the replicability of research findings; b) EOIR and the LOP contractor have access to data that is essential for any evaluation of LOP and which cannot be shared with other parties without government approval; and c) the disparate methodological approaches taken by prior studies—and the disparate findings resulting from these studies—can best be bridged by involving all key stakeholders in the review of the research process for any future program evaluation.

APPENDIX: FURTHER LIMITATIONS OF THE EOIR 2018 LOP COHORT ANALYSIS

This memo has focused primarily on the limitations of the 2021 EOIR report, which provided estimates of LOP and non-LOP detention costs and stays, and court hearing costs. There are also many limitations of the case time analyses presented in the 2018 and 2019 EOIR LOP Cohort Analyses that this memo did not treat in detail. The following is a brief review of some of these limitations.

Measurement of Proceeding and Case Types

The 2018 and 2019 EOIR analyses of LOP both conflate proceeding and case types that should be treated separately. Although some figures and tables treat released and detained respondents separately, most of the metrics aggregate these types of respondents. This is a problematic conflation given the well documented differences in case processing times for both groups.

Similarly, the EOIR analyses do not disaggregate completed and pending cases. Most of the data on proceedings is also aggregated across all proceeding types, including reasonable fear reviews. The data should instead be disaggregated by case type as they are not comparable.

The EOIR analysis includes both proceedings with individual hearings and those without. These should be analyzed separately.

Filtering of Cases for the Sampling Framework

Overall, the 2018 and 2019 EOIR reports provide very little description of the sampling process or the composition for the cohorts that were included in its analysis.

Furthermore, the sample was scoped in ways that allowed for types of respondents and types of outcomes to be factored into the assessment of case processing times that compromised the reliability of the findings.

Here are some examples:

Filtering of outcomes by timing of initial service. The EOIR Phase II report provides a graph (Figure 1, p. 6) which shows that approximately 77% of all LOP respondents received their first service before their initial hearing. But the analysis of LOP case times presented in the Phase I report does not account for the efficiency effect for LOP cases that received first service before the initial hearing. The Vera report, in contrast, observes that LOP cases in which services were received before initial hearing completed faster than a) most non-LOP cases and b) LOP cases that received first service after the initial hearing (p.14).

Cases with stipulated removal orders. The EOIR reports do not appear to exclude all cases with stipulated removal orders.⁴⁸ Cases with stipulated removal orders complete more quickly but LOP services would also not necessarily be available to these individuals due to eligibility requirements for program participation. Consequently, including those cases in an analysis of LOP efficiency is not valid and artificially biases the results to suggest longer case times for LOP. This issue raises a similar concern as

⁴⁸ EOIR *did* exclude Institutional Hearing Process (IHP) cases from its analysis, however, but IHP cases do not account for all cases with stipulated removal orders.

the treatment of cases with in absentia removal orders that was discussed in the body of the memo.

Double counting of respondents. The EOIR reports appear to double count individuals that may have had a credible fear review and then received a removal order. Similarly, the EOIR reports define “released” respondents in such a way that it is possible that some of them are also included in the “detained” sample, if the respondent had also been detained at any point during the time frame for the analysis.

Factoring Disparities in Case Processing Time that Vary by Detention Facility and Immigration Court into Estimates for LOP Case Times and Detention Stays

The 2018 Vera Institute report notes that detention facilities that are selected to participate in the LOP program are not randomly assigned by EOIR. One generally understood objective of the program is to serve facilities that have the most pressing need for improvements in case processing time; so, it stands to reason that LOP is likely to be concentrated in facilities with larger Average Daily Populations (ADP) and that are served by courts with larger backlogs. These disparities also apply to the analysis of LOP that was presented in the 2021 EOIR report and are detailed in item 5 (on page 7) of this report.

Academic studies have shown that case duration varies widely by court location (see footnote 42). There are similar facility-specific variations in detention length. These kinds of disparities have been documented by the GAO as early as 1992 (report cited in footnote 3). For example, LOP providers have no control over the time elapsed between a respondent’s start date at a facility, and their initial hearing. Local variations in average case processing times for courts serving different facilities (which are connected, in turn, to the size of local court backlogs, staffing levels, and other factors) are other factors that can effect detention stays that are beyond the ability of LOP providers to control.

Notably, in the 2018 LOP Cohort Analysis, EOIR acknowledges that “Other internal, external, and DHS-related factors may also contribute to detention length. For example, EOIR found that at each hearing location, there is significant variation in the number of days LOP and non-LOP respondents stay in detention; thus, hearing location may be an important factor for detention length.”⁴⁹ Nevertheless, there is no explanation of how the analysis attempted to control for this variation in its estimate of LOP vs non-LOP detention stays.

Analysis of Representation Rates

The 2018 EOIR report found that LOP participants were 5% less likely than non-LOP respondents to have representation. A major problem with this finding is that LOP is intended for respondents who don’t already have counsel and options for LOP participants to access counsel are via pro bono services only.⁵⁰ So by definition, the non-LOP population in a court where there is LOP will usually have a higher concentration of people with counsel. EOIR’s analysis could have, but did not, look at the EOIR-28 filing date in relation to when the LOP occurred to see how many people got counsel after participating in the LOP.

The EOIR analysis also failed to account for a variety of case-related factors that research has shown to affect representation rates, including case hearing location, whether the case was assigned to a video or in-person court, custody status, and respondent language and nationality. All these variables should have been controlled using a methodology similar to what the Vera Institute used for its 2018 report, which generated case time estimates based on comparisons of “like” cases.

⁴⁹ See page 9. EOIR, LOP Cohort Analysis, September 5, 2018.

⁵⁰ This usually occurs for a small minority of LOP participants, and only at the tail-end of their LOP service trajectory.

Analysis of Custody Hearings

The 2018 EOIR report found that LOP participants had more custody hearings. The analysis does not account for persons who are not eligible for custody hearings, such as those subject to mandatory detention—a group who may be less likely to participate in LOP.

There is also no analysis in the report on whether LOP participants are more likely to be released from custody. For every LOP participant released from custody, this saves significant dollars for the government. The report, by finding that LOP participants had more custody hearings, suggests that more might be released.

Analysis of Adjournments

The 2018 EOIR report found that from FY 2013 to FY 2017, 11% of hearings involving LOP participants were adjourned for the respondent to receive additional time to acquire representation, while 9% of non-LOP respondents' hearings were adjourned for this reason. This analysis includes both detained and released cases. These custody statuses should be analyzed separately as individuals who are released may simply fail to appear for their hearing instead of seeking a continuance for counsel. For that reason, the analysis should also exclude cases with failures to appear. In addition, by dividing the number of adjournments to seek representation by the total number of adjournments in a fiscal year, the analysis fails to exclude hearings that did not happen due to judicial absence, scheduling conflict, or a data entry error, among other reasons. The analysis should also account for hearing location, as availability of counsel can vary greatly by jurisdiction.