

Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program

Volume I

Final Report to the Immigration and Naturalization Service
August 1, 2000

Prepared under INS Contract #COW-6-C-0038
For an Appearance Assistance Program

Eileen Sullivan, Ph.D., Principal Investigator
Felinda Mottino, Ph.D., Senior Research Associate
Ajay Khashu, M.A., Research Associate
Moirra O'Neil, B.A., Research Analyst

Vera Institute of Justice
Christopher Stone, Director

Appearance Assistance Program
Oren Root, Director

CONTENTS

VOLUME I:

EXECUTIVE SUMMARY.....	i
CHAPTER 1 Introduction and Summary of Findings.....	1
Section A: Introduction.....	1
Section B: Summary of Findings.....	3
CHAPTER 2 The Program's Evolution and Methods.....	10
CHAPTER 3 Analysis of Noncitizen Groups.....	19
Section A: Introduction.....	19
Section B: Asylum Seekers.....	25
Section C: Criminal Aliens.....	33
Section D: Undocumented Workers.....	43
CHAPTER 4 A Survey of AAP Participants.....	53
CHAPTER 5 The Cost-Effectiveness of Supervision.....	64
CHAPTER 6 Conclusions and Recommendations.....	70

VOLUME II:

APPENDIX I: Measuring Appearance and Compliance	
APPENDIX II: Analyses of Factors Correlated with Successful Completion	
APPENDIX III: Tables and Charts	
APPENDIX IV: Intensive Participant Survey	
APPENDIX V: Methodology for Cost Analysis	
APPENDIX VI: Policies and Procedures of the AAP	

EXECUTIVE SUMMARY

In 1996 the Immigration and Naturalization Service asked the Vera Institute of Justice, a nonprofit organization with experience implementing demonstration projects that promote just practices in government, to establish a supervised release project for people in removal proceedings in New York City. The INS goal was to explore supervision and evaluate its effect on people's rates of appearance in court and compliance with court rulings compared to other alternatives to detention already used by the agency, such as bond, parole, and release on recognizance. The Appearance Assistance Program (AAP), a three-year test of community supervision for people in immigration removal proceedings, began operations in February 1997.

Why choose to experiment with community supervision? The INS has experienced varying degrees of success with other methods of release, and has not been satisfied with the results. Four years ago the INS estimated that only 50% of noncitizens released into the community appeared in court. Statistics also showed that those not detained pending their required departure from the country had a compliance rate of 11%. While detaining people during removal proceedings ensures that they attend their hearings and comply with orders to leave the country, it also requires increasing numbers of costly detention facilities.

By asking Vera to test whether community supervision could improve rates of appearance and compliance without increasing reliance on detention, the INS was considering an alternative already used by the criminal justice system. In many ways, the challenges faced by the INS and the criminal justice system are comparable. Both systems seek to ensure that people will attend required court proceedings, and employ many of the same types of alternatives to detention. But while the criminal justice system has effectively used supervised release for many years, the INS has not had this option.

The AAP ended in March 2000. By that time, the project had supervised more than 500 noncitizens, who fell into three groups: people seeking asylum; individuals facing removal as a result of a criminal conviction, most of whom were lawful permanent residents (criminal aliens); and undocumented workers apprehended at work sites. The program provided supervision at two levels, intensive and regular. Intensive participants were people initially detained by the INS and then released to the AAP; they had to report regularly to AAP supervision officers in person and by phone. Program staff monitored each participant and re-evaluated the risk of flight. Regular participants were noncitizens apprehended by the INS and then released on recognizance; they entered the program voluntarily. People in both types of supervision received information about immigration proceedings and the consequences of noncompliance, reminders of court hearings, and referrals to legal representatives and other services.

This report describes the AAP and evaluates the effects of the program by addressing two main questions: Were rates of appearance at required hearings and compliance with final court orders higher for AAP participants than for members of comparison groups? Was the program a cost-effective alternative to detention? To answer these questions, researchers used quantitative data from the INS, the Executive Office for

Immigration Review (the agency responsible for immigration court), and the AAP, as well as qualitative data from observations and interviews with participants. The study sought to demonstrate what level of compliance a supervision program could achieve, and to assess how much and what kind of supervision might be appropriate for different types of noncitizens. Since the INS had expressed an interest in expanding its range of alternatives to detention, the ultimate goal was to help the agency make better use of all its release options and use detention space more efficiently and effectively.

Main Findings

- About 90% of supervised noncitizens appeared in court compared to 71% of nonparticipants.

The AAP demonstrated that the INS does not have to detain all noncitizens in removal proceedings to ensure high rates of appearance at immigration court hearings. Ninety-one percent of participants in the intensive program attended all required hearings in comparison to 71% of noncitizens released on bond or parole. These appearance rates also indicate that even without supervision, many people, particularly asylum seekers and criminal aliens, are willing to attend immigration court hearings as required without having to be detained at that stage in the process.

- Intensive AAP supervision had the greatest effect on undocumented workers.

All three groups of noncitizens appeared at similar rates under intensive supervision; the numbers ranged from 88% for undocumented workers to 94% for criminal aliens. Undocumented workers in the comparison group appeared only 59% of the time; criminal aliens and asylum seekers about 75% of the time. Thus, the effect of intensive supervision is more dramatic for people who are less likely to appear—undocumented workers with little chance of winning their cases—and less so for people who are more likely to appear.

- Regular AAP supervision was especially effective for criminal aliens and asylum seekers.

Criminal aliens released by the INS on recognizance who voluntarily entered regular supervision appeared 92% of the time, compared to the criminal aliens in the comparison group, who appeared 82% of the time. Participant asylum seekers appeared at a rate of 84% compared to nonparticipant asylum seekers, who appeared at a rate of 62%. For undocumented workers there was little difference between regular participants and nonparticipants (59% and 55%, respectively).

- AAP supervision almost doubled the rate of compliance with final orders.

Sixty-nine percent of AAP intensive participants complied with the final order in comparison to 38% of comparison group individuals, all of whom were released on bond or parole. Participant asylum seekers, criminal aliens, and undocumented workers all complied at higher rates than the equivalent comparison groups. Most of the compliance is due to people being allowed to stay in the United States.

For noncitizens ordered to leave the country, many of the orders are not yet final. Our findings, therefore, are not conclusive. Of those granted voluntary departure

about half did not depart, and people in supervision did no better than those on bond. For noncitizens granted voluntary departure, the effectiveness of supervision could be improved by having their release to supervision tied to the court's grant of voluntary departure. In that way noncitizens who violate the rules of supervision could be subject to redetention. The INS should also maintain a capacity to redetain people ordered removed from the country.

- Compared to detention, the cost of supervision is 55% less for asylum seekers and 15% less for criminal aliens.

Supervision is more cost effective than detention for the noncitizens the INS currently detains— asylum seekers and criminal aliens. It costs the INS \$3,300 to supervise each asylum seeker who appears for hearings compared to \$7,300 for those detained. For criminal aliens, supervision costs \$3,871 compared to \$4,575 per detained individual. Under the current system, undocumented workers cost more to supervise than to detain, but the expense would be less if the court process were expedited for these people, most of whom have few possibilities for relief other than voluntary departure.

Conclusions

The addition of supervision would improve compliance rates as well as INS capacity for case management and strategic planning. Supervision would provide the agency with better information about participants' whereabouts, passage through the system, risk of flight, and eventual departure from the country. Supervision would also provide the INS with a graduated range of alternatives to detention that would work, in the most cost-effective way, for different types of noncitizens. The lessons learned from supervision would help improve the agency's capacity to assess a person's eligibility for release throughout the removal process and the most appropriate release option at different stages. In this way, the INS could use all of its release alternatives to capitalize on people's personal incentives to appear and comply with the law, and to add incentives— such as more rather than less intensive supervision, or minimal supervision rather than bond or parole—when they are needed.

By reducing its reliance on detention to secure compliance, the INS could reserve its detention space for people who cannot be released, who violate the rules of release, and who are at the stage in the process when they are at serious risk of flight. Reducing reliance on detention and using it only when necessary would also allow the INS to treat each noncitizen more fairly and humanely.

The report recommends that the INS implement and evaluate additional experimental supervised release programs in several districts around the country and that the agency move toward a nationwide supervision program. Next steps on the way to that goal should address how results in other districts compare to results for New York, how to maximize rates of compliance with orders to leave the country, how more consistent redetention in response to program violations affects a program's rates of appearance and compliance, and whether the INS or an independent agency should administer supervision programs in the future.

CONTENTS

VOLUME I:

EXECUTIVE SUMMARY	i
CHAPTER 1 Introduction and Summary of Findings	1
Section A: Introduction.....	1
Section B: Summary of Findings.....	3
CHAPTER 2 The Program's Evolution and Methods	10
CHAPTER 3 Analysis of Noncitizen Groups	19
Section A: Introduction.....	19
Section B: Asylum Seekers.....	25
Section C: Criminal Aliens.....	33
Section D: Undocumented Workers.....	43
CHAPTER 4 A Survey of AAP Participants	53
CHAPTER 5 The Cost-Effectiveness of Supervision	64
CHAPTER 6 Conclusions and Recommendations	70

VOLUME II:

APPENDIX I: Measuring Appearance and Compliance	
APPENDIX II: Analyses of Factors Correlated with Successful Completion	
APPENDIX III: Tables and Charts	
APPENDIX IV: Intensive Participant Survey	
APPENDIX V: Methodology for Cost Analysis	
APPENDIX VI: Policies and Procedures of the AAP	

CHAPTER 1: INTRODUCTION AND SUMMARY OF FINDINGS

SECTION A: INTRODUCTION

Can the INS ensure that every noncitizen facing the threat of removal from the United States will appear at required court hearings and leave the country if directed to do so? And can the agency ensure this outcome with policies that are not only feasible but also just and humane? One possible strategy is to hold every noncitizen in detention. This is not feasible, of course. At any given time, more than 100,000 people are in immigration court proceedings for violation of immigration laws, and more than 300,000 people are placed in these proceedings every year. The INS has fewer than 19,000 detention beds.¹ Moreover, detaining every noncitizen is neither just nor humane. Many people in removal proceedings are fleeing persecution in their own countries, or have established lives in the United States, and they will eventually win their cases in immigration court. Others will be directed to leave the United States and will, however reluctantly, comply with the law. Detention is an ordeal they should be spared.

The INS has developed several alternative ways to deal with these issues. The agency releases some noncitizens on bond or parole after detaining them for an initial period. It releases others on recognizance without detaining them at all. The agency is not satisfied, however, that these alternatives adequately achieve its goal of ensuring compliance with the law. The INS has reported that only 50% of the noncitizens who are released from detention appear for their hearings, and only 11% comply with orders to leave the country.² INS officials considered that another alternative—supervision in the community—might be more successful in getting those released to appear at required court hearings and comply with the court's final order. If supervision were successful, the INS could use its scarce detention space for those who threaten public safety and those who are most likely to abscond. In this way, the agency would develop a more cost-effective system to achieve compliance with the law.

The INS brought these considerations to the Vera Institute of Justice, a nonprofit organization with almost forty years' experience testing innovations in partnership with government. The agency asked Vera to design, implement, and evaluate a supervision program for noncitizens in removal proceedings. The result was the Appearance Assistance Program (AAP), which began operating in February 1997.

The AAP drew its participants from INS facilities in the New York City area. The program accepted people from three groups: asylum seekers, persons convicted of crimes (criminal aliens), and undocumented workers apprehended at work sites. The

¹ U.S. Senate Subcommittee on Immigration. *Testimony of Doris Meissner, Commissioner, Immigration and Naturalization Service, Concerning INS Reform: Detention Issues*, September 16, 1998.

² U.S. Department of Justice, Office of the Inspector General, *Inspection Report, Immigration and Naturalization Service Deportation of Aliens After Final Orders Have Been Issued* Report Number 1-26-03, March 1996. Also, Vera Institute of Justice, *Plan for an Appearance Assistance Program*, Submitted to the Immigration and Naturalization Service and the National Institute of Justice, January 2, 1996.

AAP provided supervision at two levels: intensive and regular. Intensive participants were people initially detained by the INS and then released to supervision. As a condition of their release, participants were required to report regularly to supervision officers in person and by phone. Program staff monitored each noncitizen's whereabouts and assessed each individual's risk of flight. The intensive supervision program provided participants with information about their obligations to comply with immigration laws, and about the consequences if they did not. Regular program participants were noncitizens apprehended by the INS and then released on recognizance. They entered the program voluntarily and were given reminders of court hearings as well as legal information, referrals to lawyers, and other services.

For three years, the INS and Vera tested the AAP to see what kind of compliance a supervision program could achieve, and to assess the level of supervision that might be appropriate for different types of noncitizens. The program supervised more than 500 participants—165 at the intensive level, and 369 at the regular level. Both Vera and the INS expected that an evaluation of the program would give the INS useful information about whether supervision works, and if so, how and at what cost. This information would permit the INS to compare supervision to its alternatives: detaining noncitizens or releasing them on parole, bond, and recognizance. Both partners also hoped that the evaluation would help the INS allocate its detention space more efficiently, by identifying those who are likely to abscond and the point in their proceedings when they are most likely to do so.

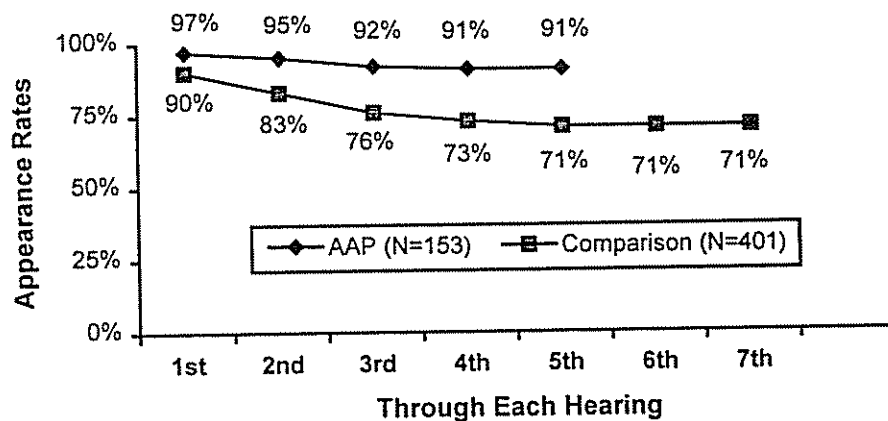
The rest of this introductory section of the report summarizes the main results of the research. Chapter 2 provides a detailed description of the AAP, tracing the evolution of the demonstration over its three years and explains the key strategies employed by program staff. Chapter 3, the longest section of the report, discusses the research results in detail for each of the three noncitizen groups. The quantitative chapter is complemented by an analysis of AAP participants' views about the program in Chapter 4. A cost-effectiveness analysis of the AAP in Chapter 5 completes the body of the report. Finally, we offer some conclusions and policy recommendations in light of the research. Detailed descriptions of the methodology used in the research and selections from AAP's Policies and Procedures manual are contained in the Appendices in Volume II of the report.

SECTION B: SUMMARY OF FINDINGS

The impact evaluation of the AAP demonstrates that the INS does not have to detain all noncitizens in order to ensure very high rates of appearance at court hearings. Ninety-one percent of those deemed eligible for the AAP and released to the intensive supervision program appeared for all of their hearings. All of the noncitizen groups appeared at similar rates, ranging from 88% for undocumented workers to 94% for criminal aliens.

Intensive supervision is significantly more effective in securing appearance than release on bond or parole—the other alternatives to detention available to the INS. Noncitizens released on bond or parole were selected as comparison groups for the AAP participants; 71% of them appeared for all of their hearings.³ The participants achieved better appearance rates even though AAP staff repeatedly told virtually all of the asylum seekers and most of the criminal aliens that they would be redetained in court if they were ordered removed. The comparison group members did not face this possibility of redetention.⁴

Figure 1: Continuous Appearance at Hearings by 3/31/00, AAP and Comparison Groups



Continuous appearance rates indicate the proportion of all participants and comparison group members in the study who were in “good standing” at each hearing point, that is, they had attended all their scheduled hearings. For example, at the second

³ A 1989 U.S. GAO study reported that 73% of noncitizens were appearing at required court hearings in the New York and Los Angeles districts. Their findings are consistent with the appearance rates achieved by the control and comparison groups in our New York City sample. (See U.S. General Accounting Office, *Immigration Control: Deporting and Excluding Aliens from the United States*, October, 1989.)

⁴ For a detailed description of the methodology used in the research, including the selection of comparison groups and the calculations of statistical significance, see Methods Appendix I. The difference in appearance rates between AAP and the comparison groups overall, and between participant asylum seekers and undocumented workers and their comparison groups, are significant at the .01 level according to the Fisher’s Exact right tail test. Unless otherwise noted, all significant differences reported in this chapter of the report were determined at the .01 level using this same test.

hearing point, 95% of the 153 AAP participants were in good standing—they attended their first hearing and received the court's final order, or they had a second scheduled hearing which they attended, or, as of March 31, they were still awaiting a second hearing. Continuous appearance is cumulative and all individuals are accounted for at each point. Thus by the fifth hearing, 91% of the 153 participants had attended all their scheduled hearings; the great majority of them had received a final order but some had hearings scheduled for after March 31.

While all of the noncitizen groups appeared at similar rates under intensive supervision, they did not have similar rates when released on parole or bond. About three-fourths of the criminal aliens and asylum seekers appeared for their hearings, but the undocumented workers appeared only 59% of the time. The effect of intensive supervision is more dramatic, then, for those with fewer incentives to comply on their own—the undocumented workers who have little chance of winning their cases. The effect is less dramatic for those with greater incentive to comply, for example, the asylum seekers who come to this country seeking the protection of the U.S. justice system.

It is worth noting that the appearance rates achieved by asylum seekers and criminal aliens released on parole or bond, while lower than those achieved under supervision, are still relatively high. A comparison with the appearance rates achieved in criminal courts can provide some context. According to the most recent available data, 78% of felony defendants released from detention before their criminal trials made all of their required court appearances.⁵ The actual rates in immigration court are also higher than the INS estimated at the start of the project.

The evaluation also demonstrates that the INS does not have to detain all noncitizens to secure high rates of compliance with court orders. The compliance status of some noncitizens is confirmed as soon as they receive their final orders; they are either allowed to remain in the United States or they are ordered removed in absentia after failing to attend a hearing. The status of others, who are required to leave the country under orders of voluntary departure or removal, can be confirmed only when they actually depart.

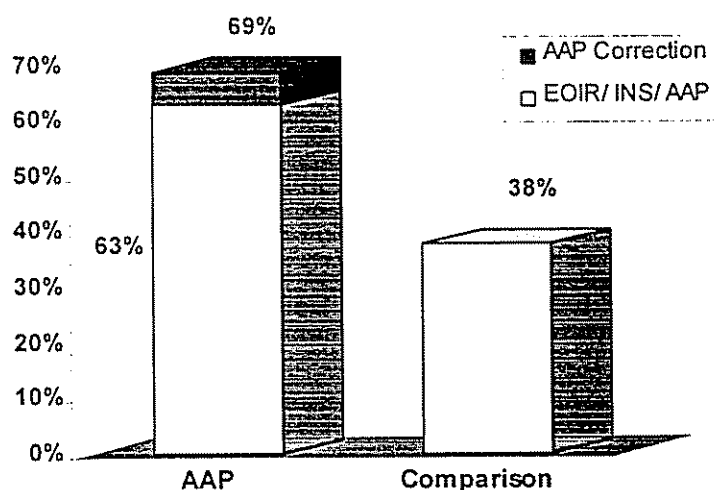
In our analysis we rely, as far as we can, on the same data sources to confirm the status of participants and comparison groups, that is, the Executive Office for Immigration Review (EOIR) for appearances and final court orders, and the INS for departures from the country. However, we supplement these sources with AAP's data on participants in two circumstances: when the participants' compliance status is still

⁵ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties, 1996, 1999*. The defendants include those released on bail and recognizance.

unknown to the INS and when the INS underreports participants' confirmed departures from the country.⁶

Figure 2 shows the results. Using AAP only to fill in missing data, 63% of intensive AAP participants have complied with final court orders. When AAP is also used to correct for INS underreporting, the confirmed compliance rate for participants increases to 69%. In both cases, the participants' compliance rate is significantly higher than the 38% rate achieved by the comparison group released on bond or parole. All three categories of participants— asylum seekers, criminal aliens, and undocumented workers—complied at higher rates than their comparison groups, and the difference is statistically significant for the undocumented workers.

Figure 2: Confirmed Compliance with Final Court Order, AAP and Comparison Groups



N=84 AAP participants; 280 comparison group members
 Data sources: EOIR/INS with AAP data for participants' missing compliance data and to correct for INS underreporting.

Over half of the asylum seekers in the study (48% of intensive participants and 57% of the comparison group) were allowed to remain in the United States. Among the criminal aliens and undocumented workers who were initially detained and then released to supervision or bond, more than 90% of the workers and over 80% of the criminal aliens were required to leave the country. Within each noncitizen group, the participants who were required to leave were more likely than the comparison group members to be

⁶ The compliance status of one-quarter of AAP participants and 4% of the comparison group members has not yet been recorded by the INS. We assume that the comparison group members with missing compliance status comply at the same rate as the comparison group members whose status is known (see Methods Appendix I for a detailed description of redistributing unknown compliance status). With respect to INS underreporting, the AAP has verified the departure from the country of five participants who are recorded as absconders by the INS. Although it is quite likely that the INS is also underreporting the compliance of comparison group members, we cannot extend this second analysis to them because the INS is the only source to confirm their departure.

present in court to receive the decision; the comparison group members were significantly more likely to be ordered removed in absentia.

The evaluation results suggest caution about using community supervision to enforce orders to leave the country. The results are not conclusive on this aspect of the program and they are only partially encouraging. Most of the asylum seekers and criminal aliens—both participants and comparison group members—who were ordered removed are still appealing their cases, or they have not yet been issued notices to surrender.⁷ We have results for the undocumented workers, most of whom were granted voluntary departure. About half of the participants who received this court order did not depart the country as required, and supervision was not more effective than the release on bond alternative in securing their compliance. AAP staff learned—too late in the project to have much effect on compliance—that immigration court judges will, on a request from the INS, attach conditions to grants of voluntary departure, requiring the noncitizen to be in a supervision program, subject to redetention for any serious violation of program rules. A future supervision program could take advantage of this redetention option to increase the compliance rates of participants who are granted voluntary departure.

The impact evaluation does provide evidence that certain noncitizens will achieve high appearance rates with the less intense form of supervision provided in the AAP regular program. Regular criminal alien participants—who are primarily LPRs apprehended and released at JFK airport—appeared at a rate of more than 90%. This was significantly better than the 82% rate achieved by the comparison group members, who were also released on recognizance but did not become AAP participants. Again, however, 82% is a relatively high rate of appearance. Moreover, nearly two-thirds of the regular criminal alien participants and half of their comparison group members ultimately received court orders allowing them to remain in the United States.

The asylum seeker participants in the regular program also appeared at a high rate (84%) and nearly two-thirds of them were ultimately allowed to remain in this country. By comparison, the asylum seekers who for humanitarian reasons were released on

⁷ If a noncitizen appeals the immigration judge's final decision, the process can be lengthy. According to a Department of Justice Inspector General report, the Board of Immigration Appeals (BIA) of EOIR took an average of almost one year to review appeal applications of noncitizens who were not in INS custody. The report also found that noncitizens who received a final order requiring them to leave the United States either by an immigration judge or the BIA were not consistently issued orders to surrender. Another Inspector General study found that the Detention and Deportation branch of the INS only directed 56% of their sample of noncitizens who were ordered removed to surrender for deportation. The INS's reasons for failing to direct surrender included lack of a good address, political or humanitarian concerns raised by the noncitizen's country of origin, and the cost of removal. [See U.S. Department of Justice Office of the Inspector General, *Voluntary Departure: Ineffective Enforcement and Lack of Sufficient Controls Hamper the Process*, Report No. I 99-09, March, 1999. Also, *Immigration and Naturalization Service Deportation of Aliens After Final Orders Have Been Issued*, 1996.]

recognizance, but did not become participants, attained a 62% appearance rate and 40% of them were ultimately allowed to remain in this country.⁸

Several factors increase the likelihood that a noncitizen will comply with hearing requirements. While they vary for the three categories of cases, the most consistent factors are having community and family ties in the United States, and being represented by counsel. Participation in the AAP also had an independent effect on hearing attendance for criminal aliens in intensive and regular supervision, and for undocumented workers in intensive supervision. This means, for example, that when we compared two criminal aliens with the same demographic characteristics, or two undocumented workers with the same level of family ties, the participant was more likely to attend all required hearings than the comparison group member. This also means that supervision can make up for other factors that motivate people to abscond. Evidence suggests that in addition to its independent effect, participation in the program also increased the chances that a noncitizen would be represented by counsel, further strengthening the likelihood of appearance.

Program participation did not have an independent effect, however, for asylum seekers. Participants and comparison group members with equivalent community ties in the United States attended their hearings at about the same rate. Participant asylum seekers achieved a higher appearance rate than those released on parole because the program more effectively screened for community ties.

Our survey of participants provides some insight into the aspects of the supervision program that influenced the noncitizens to appear for their hearings. Participants told us that the program helped them make more informed decisions by explaining the court process, the ways to search for a lawyer, the legal options available to them, and the consequences of failing to appear in court. Participants also expressed an unwillingness to disappoint the program staff, who had treated them with respect and consideration. This suggests that the relationship the program forged with participants also played a role in decisions to appear.

A final important question concerns the cost-effectiveness of intensive supervision relative to that of detention and to release on parole or bond. We consider two measures of cost-effectiveness: the first is the cost to the INS for every noncitizen who appears at all required hearings in immigration court; the second is INS cost for every individual who complies with final court orders.⁹

For the noncitizen groups the INS is currently detaining— asylum seekers and criminal aliens—intensive supervision is a more cost-effective alternative. We estimate,

⁸ The differences in appearance rate between asylum seeker participants in the regular program and their comparison group, and the differences in the rates at which the two groups were allowed to remain in the United States, are significant at the .10 level.

⁹ The first measure would be the appropriate one should the INS decide to redetain those required to leave the country at their final hearing. The second is the appropriate measure if individuals remain on parole or bond for the entire removal process.

for example, that it costs the INS about \$7,300, on average, to detain each asylum seeker who attends all required hearings. The corresponding cost of supervision is \$3,300 (Table 1). On the basis of our current data, we also estimate that supervision is more cost-effective than detention in securing asylum seekers' compliance with final court orders.¹⁰ Even if the final compliance rate of the participant asylum seekers still appealing removal orders turned out to be as low as 25%, supervision would be less costly than detention.

Table 1: Cost Effectiveness Through Final Hearing

Custody Strategy	Asylum Seekers		Criminal Aliens		Undocumented Workers	
	Continuous Appearance Rate	Cost Per Individual Who Appears	Continuous Appearance Rate	Cost Per Individual Who Appears	Continuous Appearance Rate	Cost Per Individual Who Appears
Detained throughout proceedings	100%	\$7,259	100%	\$4,575	100%	\$1,098
Detained and later paroled or bonded out	78%	\$4,223	77%	\$238	59%	\$931
Detained and later supervised	93%	\$3,310	94%	\$3,871	88%	\$3,809

N= Asylum seekers: 83 supervision participants, 214 comparison group members;
 Criminal aliens: 16 supervision participants, 93 comparison group members;
 Undocumented workers: 54 supervision participants, 94 comparison group members.

Undocumented workers are the exception; INS costs for each individual who attends all hearings and who complies with a final court order are lower using the detention strategy than they are using supervision. However, should the INS be unwilling to use scarce detention space for undocumented workers, it could improve the cost-effectiveness of the supervision option by organizing an expedited court process for those eligible only for voluntary departure, and by maintaining a capacity to redetain those at risk of absconding.

Comparing intensive supervision to the other nondetention option available to the INS—release on parole or bond—shows that supervision is the better strategy for asylum seekers, at least under the INS's current criteria for paroling people (Table 1). However, release on parole, or to minimal supervision, could eventually be the more cost-effective alternative for the asylum seekers if they were better screened prior to release.

The relative cost-effectiveness of supervision and release on bond for criminal aliens and undocumented workers depends on the trade-off the INS is willing to make between cost and compliance rates. Release on bond is a very low-cost strategy. With it, the INS obtains a 77% appearance rate for criminal aliens (which the agency might

¹⁰ The table showing cost-effectiveness through compliance with final court orders is in Chapter 5.

consider acceptable) but only a very low rate of compliance with final orders (34%). With the low-cost strategy, the INS obtains low rates of both appearance and compliance for the undocumented workers (59% and 26%, respectively).

The AAP's experience shows that there are asylum seekers, criminal aliens, and undocumented workers who will attend their hearings at very high rates if they are released from detention and permitted to live in the community. The most intense level of supervision seems particularly appropriate for those with fewer incentives to comply on their own—this includes the criminal aliens who were initially detained and the undocumented workers. Intensive supervision could also be used, in combination with detention, for people from all noncitizen groups who are required to leave the country. For example, individuals who received voluntary departure could be in intensive supervision, subject to redetention for failing to make adequate departure plans. People could be redetained in court when they are ordered removed and then, depending on an assessment of their risk of absconding, released to intensive supervision if they appeal their cases—subject to redetention for program violations.

The research on the AAP also shows that some noncitizens will attend their hearings at equally high rates under minimal supervision or under parole, bond, and recognizance. This seems especially true for the detained asylum seekers who, if adequately screened, could do as well on parole—or perhaps with minimal supervision—as they did in the intensive supervision program. It also seems true for the criminal aliens who were released on recognizance.

With supervision, the INS would have an array of alternatives to detention that would work, in the most cost-effective and just way, for different noncitizens, capitalizing on their own incentives to comply with the law and using varying levels of supervision to add incentives when they are needed.

CHAPTER 2: THE PROGRAM'S EVOLUTION AND METHODS

Evolution of the AAP

Throughout its three-year history, the AAP evolved in response to changes in immigration law and in INS priorities, and also in response to the program's experience. In several ways, the program is different from the model that was originally planned by the Vera Institute. The program adapted to changes that limited some participant pools and expanded others, for example, and the regular program emerged over time as a second supervision track. Many of the changes were prompted by the passage of a new immigration law, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), which took effect on April 1, 1997.

Changes in Participant Availability

IIRAIRA created a series of procedures known as expedited removal. The law now requires that asylum seekers apprehended at ports of entry be detained for an initial period so that an asylum officer can conduct a preliminary interview, known as the credible fear interview. The purpose of this interview is to determine whether individuals have reason to fear persecution in their home country. This meant that asylum seekers could not be released to the AAP until the credible fear decision had been made—typically one to three weeks after the noncitizen was apprehended.

Although the AAP had informed the INS that it was prepared to begin screening asylum seekers at the appropriate detention facilities and to recommend them for release only after they had received a positive credible fear determination, the INS did not give permission to screen asylum seekers detained at the Wackenhut facility near JFK airport until August 1998. From that point on—halfway through the demonstration—the program began to enroll asylum seekers in substantial numbers. In addition, the INS extended the demonstration for an additional six months—until March 31, 2000—in large part to increase the amount of data the AAP would have for asylum seeker participants. By the end of the demonstration, 83 asylum seekers had participated in the intensive program; 50 of them had completed their hearings before the immigration court, and the remainder was still in the process of attending hearings.

Following the resumption of asylum-seeker screening in August 1998, INS officials at the Wackenhut detention center did not refer approximately 20% of the newly arrived asylum seekers who were eligible for AAP screening. Because the INS has not provided an explanation for excluding this group from screening, we do not know if the exclusions had any effect on the research results.

IIRAIRA further limited the population available to AAP's supervision by restricting the ability of criminal aliens to apply for relief from removal. As it was originally planned, the AAP would have as one of its screening requirements that potential participants be eligible to apply for a legal remedy which, if granted, would

allow them to stay in the United States legally. After the passage of the new law, very few of the criminal alien detainees held at the Varick Street Service Processing Center (SPC) met this criterion.

During the planning stage, the INS expressed an interest in having the Vera Institute test supervision for noncitizens ineligible to apply for relief. At the time, Vera was reluctant to supervise people who did not have this legal incentive to appear for court hearings. However, as a result of the passage of IIRAIRA—specifically, the diminished pool of criminal aliens eligible to apply for relief—the AAP decided to expand its eligibility criteria. AAP intake screeners considered people who were not eligible to apply for relief but who had a combination of ties to the local community, and to their home countries, in case they would eventually be deported. Under these new criteria, the AAP began to recommend eligible criminal aliens detained at the Varick Street SPC for release to supervision. However, as further discussed below, the INS rejected approximately two-thirds of the AAP's 46 recommendations.

A second aspect of IIRAIRA that had an important impact on the demonstration's enrollment of criminal aliens was the mandatory detention requirement for virtually all criminal aliens that went into effect on October 9, 1998. After this date, the AAP did not take any criminal aliens into the program. By the end of the demonstration on March 31, 2000, 16 individuals from Varick Street had entered the intensive program and ten had completed their hearings.

Thus, although it was initially thought that formerly detained criminal aliens would be a substantial population for the AAP, the number of criminal alien intensive participants remained small throughout the demonstration as a result of the change in the law, INS resistance to the AAP's intake recommendations, and Vera's initial reluctance to supervise noncitizens ineligible to apply for relief.

A different population did become available, however. In early 1997, the INS in New York began to detain undocumented workers apprehended in work-site enforcement actions. Most of these workers had no basis to apply for relief but, under the AAP's new screening criteria, they were eligible for the program. Between the fall of 1997 and the spring of 1998, the AAP enrolled a substantial number of undocumented workers in the intensive program. By the end of the demonstration, 66 undocumented workers had participated; 49 had completed their hearings, five were still attending hearings, and 12 had never been scheduled for hearings.

The AAP and the INS initially planned that those individuals found eligible after AAP screening would be released to the program, allowing the demonstration to test, among other things, the usefulness of its eligibility criteria in predicting whether individuals are good risks for supervision. This did not occur. In the first year and a half of program operations, local INS officials rejected approximately one-half of the AAP's release recommendations, including two-thirds of the criminal aliens and one-half of the

undocumented workers recommended for intensive supervision.¹¹ A significant proportion of the individuals whom the INS rejected for AAP supervision was eventually released on bond.¹²

The Emergence of Regular Supervision

The original plan called for the AAP to test a supervision program for noncitizens released from detention, although during the planning process the INS had also asked Vera to consider ways to increase court appearance rates for individuals *not* subject to detention. After operations began, only a small number of detained noncitizens were released to supervision and the AAP agreed to develop a “regular” supervision track for noncitizens released on recognizance who would join the program voluntarily.

In connection with these new procedures, the AAP began to supervise asylum seekers released on “humanitarian” grounds, criminal aliens released at JFK airport, and undocumented workers apprehended and then released. The criminal aliens were primarily legal permanent residents apprehended because of old—and usually nonviolent—criminal convictions as they sought to reenter the country. The asylum seekers classified as humanitarian cases included pregnant women, the elderly, people traveling with children, and people with medical conditions.

The AAP staff thought that the regular supervision group, once created, would be a comparatively small portion of its caseload, but the program ultimately enrolled more participants than originally expected.¹³ With the implementation of this track, the AAP was able to test varying levels of supervision to inform the INS about whether there were groups of noncitizens who would do well with the relatively minimal level offered in the regular program.

The remainder of this chapter details the specific strategies and procedures the AAP developed to promote compliance with the law.¹⁴

¹¹ The district did not provide reasons for the rejections of recommendations for release of the undocumented workers, but did for most of the rejections for criminal aliens. The only intake site where AAP recommendations were generally granted as originally planned was the Wackenhut detention facility, which approved 93% of those recommended for release.

¹² The individuals recommended for AAP participation but rejected by the INS and then later released, became members of two comparison groups. These INS-rejected groups had lower appearance and compliance rates than those whose recommendations were approved and who became AAP participants.

¹³ By the end of the demonstration, the AAP regular program had enrolled 24 asylum seekers, 111 criminal aliens, 150 undocumented workers, and 84 others (generally people with issues concerning their legal immigration status). About 80% of the asylum seekers, 63% of the criminal aliens, and 90% of the undocumented workers had completed their hearings.

¹⁴ A selection of the AAP’s written policies and procedures are included as Appendix VI of this report.

AAP Strategies and Procedures

Intake

To be recommended for release into the AAP's intensive supervision program, potential participants must have had satisfactory scores on screens relating to public safety and compliance with prior appearance requirements, a verified address, and a guarantor who agreed to maintain regular contact with the participant and the AAP. They also had to agree to the terms of intensive supervision, which included regular reporting requirements, home visits, and sanctions for violating the terms of release.

The AAP's intake screeners employed three key strategies:

- *Evaluation of criteria relevant to supervision:* To identify appropriate candidates for supervision, intake staff interviewed potential participants, reviewed their INS A-files, and verified information. The screening measured a set of factors including the following: the strength of family and community ties, appearance rates in prior legal proceedings, and eligibility to apply for a legal remedy. In addition, screeners disqualified those candidates who posed a public safety risk (as determined by a review of the candidate's rap sheet). If a detainee was not eligible to apply for any legal remedy (other than voluntary departure), but met all other eligibility criteria, intake screeners looked to see if the candidate's community ties and other equities, both in the United States and in their home countries, indicated an incentive to comply with the AAP and with the immigration process.
- *Verifying address and contact information:* Before a participant was accepted into the program, intake staff verified—through telephone calls and/or address databases—that the individual was in fact living at the stated address. This is important in light of the fact that the AAP has found that noncitizens sometimes provide the INS with false address information. When the INS does not have accurate information for an individual, it makes the task of locating them for removal from the United States very difficult.
- *Enlisting guarantors to encourage compliance:* Another requirement of supervision was that the participant have a designated guarantor who agreed to take moral (not legal or financial) responsibility for making sure the noncitizen fulfilled all obligations. The guarantor was usually a relative of the participant and had to have been a United States citizen or lawful permanent resident. In many cases, the guarantor was someone with whom the participant lived and who had a great deal of influence over his or her decision-making.

Supervision

Once accepted into the program, participants' main contact with the AAP was with supervision and field staff. Supervision officers monitored the participants' progress as they moved through the hearing process, and sought to keep participants in compliance with their obligations to both the immigration court and the AAP.

The AAP provided information that helped participants navigate the court process and make informed decisions about their legal situation. Supervision officers placed a high priority on making sure that AAP participants understood the consequences of noncompliance. Required reporting sessions and periodic home visits conducted by field staff served as constant reminders of the need to comply with legal requirements. Because supervision staff were in frequent, ongoing communication with participants, they learned very promptly when a participant absconded, and often could accurately discern that a participant was about to abscond.

Intensive Supervision. Typically, intensive participants were required to report to the AAP's office once every two weeks, to call twice every week, and to be available for home visits once a month. Once supervision staff established a relationship with participants, regular reporting was used as a vehicle to remind participants of their obligations. Chief among those obligations was keeping the AAP informed of current home addresses and telephone numbers, as well as other places where, and ways that, supervision staff could contact them. Generally, if participants fulfilled all program obligations for two months, their reporting schedules were reduced to once per month until the need to intensify those requirements developed—for example, immediately prior to their voluntary departure deadline.

Shortly before court hearings, supervision staff made sure that the participants were planning to attend and that they were aware of the consequences of failing to appear. At immigration court, supervision staff helped participants find their courtrooms and were available to answer logistical questions.

As long as participants complied with the conditions of supervision, they remained in the program. Supervision was terminated under the following conditions:

- The removal proceeding was completed and the participant had no further obligation to the INS or EOIR. (*Example: Relief was granted or the case was terminated or closed.*)
- The removal proceeding was completed; the noncitizen was required to depart the country, and did. (*Example: The noncitizen was granted voluntary departure and complied.*)
- The noncitizen was ordered removed by an immigration judge, was redetained at immigration court, and did not qualify for re-release on appeal.
- The noncitizen violated the conditions of the program, demonstrating either an increased risk of flight or actually absconding, and could not be brought back into compliance. In these cases, the AAP recommended to the INS that the participant be returned to detention.

The AAP employed several strategies to encourage compliance. They included:

- *Orientation:* New participants were required to attend an orientation session with supervision staff during which the basic rules and conditions governing their supervision were discussed. During this initial meeting, the participant learned about the various reporting requirements, basic immigration court procedures, and the penalties for violating the conditions of the program. AAP staff discussed the resources and services the AAP could provide and asked a series of questions to determine what services participants might need. Guarantors were also required to attend the orientation.
- *Ongoing monitoring:* The AAP maintained frequent contact with participants during the course of their removal proceedings. Supervision staff relied on these interactions to ascertain which factors were encouraging participants' compliance with their legal obligations and which were discouraging it, and to reinforce those factors that supported compliance and mitigate those that did not. Each participant had a schedule of required phone call-ins and in-office meetings. These appointments served as opportunities to update the AAP's database with information about the participant's whereabouts and activities, answer questions about the legal process, and provide referrals to social service or legal agencies. The frequency of these contacts could be increased or decreased depending on the participant's record of compliance.
- *Information:* Immigration court proceedings are mysterious and frightening to most AAP participants. Thus, an important component of the supervision process involved providing helpful information about the legal process and specifically, about the consequences of failing to appear for an immigration court hearing. The AAP constantly reinforced the message that a participant would almost inevitably end up with the poorest result if he or she failed to appear in court. In addition, the AAP produced two informational videos (in English and Spanish) and numerous pamphlets that provided information that helped participants make decisions to comply with the law, based on a clear understanding of the advantages of compliance versus the consequences of noncompliance.
- *Resources:* Participants could use the AAP Resource Center—the program's library of legal and social service resources—to do their own research and could receive referrals from supervision staff. Referrals were made to food pantries, health clinics, English classes, other social service agencies and, most importantly, free or low-cost lawyers—all of which addressed potential obstacles to compliance. Continued outreach to legal service providers increased participants' ability to obtain legal counsel. In addition, many asylum seeker participants made use of the center's materials on country conditions and books on immigration law, resources that helped them to take a more active role in preparing their cases.
- *Field visits:* Field officers conducted monthly home visits to ensure that participants were living at the addresses they provided to the AAP. Once inside the home, field officers might request to see where the participant's belongings were kept, to

determine whether the participant was in fact living at this location. If the participant was not at home, field officers left a letter with instructions to contact the AAP within 24 hours to confirm receipt of the letter. If the participant did not contact the AAP within this time period, a follow-up visit was scheduled. These home visits also provided opportunities to maintain up-to-date information about a participant's contacts and living situation.

- *Departure planning and verification:* During the time that participants were being supervised, supervision staff learned as much as possible about participants' travel plans and preparedness to depart, if they had been ordered to do so by the immigration court. For participants granted voluntary departure, supervision staff helped the participant to plan for his or her eventual departure by identifying dates and times, and by providing help in obtaining travel documents and purchasing travel tickets. Supervision staff also told participants how to confirm their departure with the INS and, if required to pay bond, how to post the bond and get their money returned once they had left.

Typically, AAP staff would confirm a participant's departure by meeting them at the airport, observing that they boarded the plane, and confirming that the flight departed. Whenever the AAP confirmed a departure, the AAP staff member who witnessed it submitted an affidavit to the INS. Despite this level of proof that a participant had departed, the INS never adopted procedures to accept AAP confirmations as proof—for INS purposes—of departure. As a result, the AAP confirmed the departure of five participants whom the INS has classified as absconders.¹⁵

- *Responding to program violations and increased risk of flight:* In responding to violations, including failure to meet reporting requirements, supervision staff endeavored to return participants to compliance and to discourage noncompliant behavior before it resulted in the participant's failure to appear for a hearing. Sanctions varied, depending on the seriousness of the violation as well as the participant's prior history in the program. They included verbal warnings for less serious violations, increases to the reporting schedule, additional field visits and ultimately, redetention if the participant remained noncompliant.
- *Redetention:* One aspect of the program that did not function as initially planned was the redetention of serious program violators. Of the 52 recommendations for redetention made by the AAP, only 11 resulted in the actual redetention of the participant. Furthermore, only one of these individuals was redetained in the field—

¹⁵ The Department of Justice Office of the Inspector General report on voluntary departure, previously cited, concluded that the INS cannot verify whether aliens ordered to leave the United States actually do so because it does not have a sufficient tracking system. One of the benefits of supervised release is that it provides for accurate verification of departures from the United States. (See *Voluntary Departure: Ineffective Enforcement and Lack of Sufficient Controls Hamper the Process*, 1999.)

the remainder were redetained in court or at the AAP office.¹⁶ Nonetheless, the redetention of consistent program violators is a key component of the supervision process. The 11 participants the INS was able to apprehend and redetain would in all likelihood have absconded had AAP supervision officers not identified them as a serious risk of flight.

Effective supervision necessarily involves a balance of monitoring and compliance efforts, on the one hand, and providing incentives to comply with requirements on the other. As an incentive to attend their supervision meetings and comply with supervision requirements, the AAP offered participants access to information, help in finding low-cost legal representation, and referrals to health, educational and social services. In the first year of the demonstration, supervision staff focused more of their attention on the service-provision aspect of the supervision process. This was partly due to the fact that relatively few participants had yet reached the stage in their proceedings where they had to comply with orders of the immigration court, and partly because staff members were not always confident in their judgments that a participant was at risk of absconding.

Over time, the AAP supervision officers became more focused on the compliance aspect of the supervision process, while continuing to try to meet participants' service needs. In the earlier stages of the demonstration, supervision officers were prone to second-guess their judgment that a participant was exhibiting signs of noncompliance. As the program accumulated experience, it became more adept at recognizing warning signs that a participant might be contemplating absconding. Supervision staff became increasingly able to recommend that participants be redetained while they still had accurate information about their whereabouts and before they actually absconded. Supervision staff, in part, became more confident in their ability to monitor participants and assess their risk of flight because in the 41 cases where a participant was recommended for redetention by the INS, and was not actually redetained, the individual absconded.¹⁷

Regular Supervision. Although ultimately the government may wish to employ varying supervision levels based on a classification of the noncitizen's risk of flight or other factors, for the purposes of the AAP demonstration, the level of supervision was determined by the INS's initial detention decision. Those released by the INS immediately after their apprehension became regular participants.

Upon screening, the AAP required only that potential regular participants provide a verifiable address and agree to abide by the rules of the program. Because the INS had

¹⁶ The INS was more successful in creating procedures to ensure that AAP intensive participants were redetained in court when an order of removal was issued by the immigration judge. The INS detained 13 AAP participants in immigration court upon their receiving an order of removal. The importance of redetention in these circumstances is illustrated by the three occasions on which the INS did not, despite AAP notice, redetain an AAP intensive participant who was ordered removed. Each of the three quickly absconded.

¹⁷ One of these participants absconded from supervision, but eventually completed her case in another jurisdiction and was granted relief.

determined that these participants were a low detention priority, supervision of regular participants was necessarily less rigorous than that of the intensive participants. Regular supervision participants were required to have an orientation session with supervision staff, keep the AAP informed of a current and verifiable mailing address, appear in court, and comply with the decision of the immigration judge. The key distinctions between the intensive and regular supervision programs were that participants in the regular track did not have mandatory reporting requirements beyond the initial orientation and that redetention was not used as a sanction.

Originally, the AAP's lower-level intervention consisted exclusively of sending written reminder notices about upcoming court obligations. The AAP learned from the ongoing research on appearance rates, however, that it needed to develop its regular supervision program beyond the basic "notification" model. The AAP decided that, in addition to written and oral reminders of court dates and other legal obligations, it would also provide information about the advantages of compliance and the consequences of noncompliance at each step of the process. For reminders to make a difference, those receiving them must already have a basic understanding of their obligations. The AAP also made available—upon request by regular participants—referrals to legal and other relevant services, and assistance navigating the court system and complying with legal procedures.

CHAPTER 3: ANALYSIS OF NONCITIZEN GROUPS

SECTION A: INTRODUCTION

This chapter presents the impact analysis of each noncitizen group: asylum seekers, criminal aliens, and undocumented workers. People in these groups are different in many ways, including how and when they arrived in the United States and their chances of being granted relief from removal. They face different legal requirements and have different experiences in the United States. For this reason, we wanted to see if they appear and comply at different rates and if the variables that affected their behavior are the same.

Asylum seekers in our sample are apprehended coming into the United States and usually lack a clear sense of the workings of the U.S. justice system. Unlike asylum seekers, most criminal aliens have resided in the United States and have had experience with the U.S. justice system. Also in contrast to asylum seekers, their goal in proceedings is to protect a familiar way of life in this country rather than to start a life in new surroundings. A large proportion of undocumented workers come over the southern border of the United States from Latin American countries, and have been living and working in the United States for varying periods of time. Although most are aware of the possibility of being apprehended, the actual event of being placed in removal proceedings usually takes them by surprise, and it is usually their first encounter with the U.S. justice system.

High-Priority or Low-Priority Status

The INS initially detained some of the people in our study, then released them to supervision, parole, or bond. Others were never detained but were released on recognizance. (Those who were detained throughout their proceedings were not included in our sample.) The INS considers the people it detains a higher priority than the people it does not detain. For this reason, we have labeled them high- and low-priority groups. This is also related to AAP supervision in that the intensive program took only high-priority people, and the regular program took only low-priority people.

The Analysis

Analyses are presented below in three sections, one for each noncitizen group. Each section first examines the impact of the AAP in relation to comparison groups, using the measures of continuous appearance at hearings, case outcomes, and compliance with final outcomes. Continuous appearance indicates the proportion of all AAP participants and comparison groups members who are in "good standing," that is, they have attended all required hearings to date and have not failed to appear in court. It includes all those who have had at least one immigration court hearing *whether or not* they have completed their cases. Continuous appearance is cumulative and since no one is dropped from the equation, the number of hearings per group does not affect the rate of continuous appearance. Case outcomes summarize the judges' decisions for those who

have completed their cases. Noncitizens are in compliance with final outcomes if they follow the judges' decision. If the decision is that they are allowed to remain in the United States, they are in compliance; if the decision is that they are required to leave, they are in compliance only after their departure has been confirmed. All those who are ordered removed in absentia are classified as failing to comply. Obtaining information to verify final compliance was often difficult because of the lag in INS data reporting. In many cases we had to resort to requesting and reviewing A-files to verify that a person had complied or failed to comply. For this reason, compliance with final outcomes is analyzed only for high-priority noncitizens.¹⁸

After presenting impact results, each section then goes on to an analysis of factors to explain why some noncitizens completed successfully and others did not. Successful completion means that noncitizens appeared in immigration court for all required hearings and completed their court case with a decision or other completion by an immigration judge, whether they were able to stay in the United States or were required to leave the country. Successful completion is the positive way of saying that the noncitizen was not ordered removed in absentia. Where possible, we conducted the same analysis of factors to explain why some noncitizens complied with their final outcomes and others did not.

The Sample

We used data with two different cutoff dates for our analyses, resulting in different sample sizes reported in different parts of this report. As we mentioned earlier, the program was originally scheduled to end on September 30, 1999. Although intake did end just after September 30, the INS extended supervision to March 31, 2000. We used data available through March 31 to give us the most current figures for the appearance and completion rates for each group. Because of a natural lag between the time people receive the order to depart and when they actually depart, we requested additional compliance data through June 22. Even then our compliance data may not be current. Additionally, data on the final compliance of many asylum seekers and criminal aliens in the study are not yet available. Information we have is for those who were allowed to stay in the United States or were ordered removed in absentia. Almost all who were ordered removed while present in court are on appeal or have not yet been directed to surrender.

We also used the data available through March 31 to analyze the explanatory variables of the asylum seeker group since, unlike the other two groups, many fewer had completed their cases by September 30, 1999.

We used the data available through September 30, 1999 to analyze the explanatory variables of the undocumented worker and criminal alien groups because at that point a high enough percent had completed to give a consistent picture of their successful completion rates. Although the numbers of how many people appear,

¹⁸ The INS maintains paper alien files, generally referred to as A-files, relating to INS enforcement activity and benefit determinations for individual noncitizens.

complete, and comply for these groups may be greater for the impact analysis than the analyses of explanatory factors, our overall conclusions about these groups do not change.

Data Sources

Our primary sources of data were the Automated Nationwide System for Immigration Review (ANSIR) database of the Executive Office for Immigration Review (EOIR) and the Deportable Alien Control System (DACS) database of the INS. In cases where neither included the information of interest, we used the AAP database for participants and comparison group individuals for whom AAP staff members had recorded data. (We discuss these sources in more detail in Methods Appendix I and II.)

Factors Associated With Successful Completion

Variables used in the analysis were those available and that we believed might be relevant. We found no pre-existing body of work on factors related to completing successfully versus absconding in immigration court, but we drew on work done in criminal courts. For some of the variables we had hypotheses about their expected association with successful completion; for others we thought they might be important but had no expectation of the direction of the association. For example, we expected that there would be a positive correlation between successful completion and the following: family or community ties, having a legal representative, and participating in the AAP. On the other hand, we were unsure of any possible effect of gender, age, or other demographic variables.

In structuring the analysis, we made every attempt to examine variables from the point of view of the INS, so that our findings would be useful to (1) people making release decisions, and (2) future program supervision officers.¹⁹ For this reason we distinguish between a noncitizen's characteristics and situation before becoming involved in proceedings, on the one hand, and situations and events during proceedings, on the other. The former includes demographics and family ties in the United States. The latter includes having legal representation, applying for relief, and being subject to AAP supervision.

¹⁹ Peter Schuck points out that the variables or characteristics that the INS emphasizes when making release decisions are country of origin, criminal status, nature of crime for which convicted, gender, age, and legal or illegal immigration status. He suggests that INS also take into consideration family characteristics, history of prior entries and removals, history of absconding, criminal recidivism, gang membership, removability, and legal representation. Where the data were available, we tested the effects of these characteristics on appearance at hearings. [See Schuck, Peter "INS Detention and Removal: A 'White Paper'." *Georgetown Immigration Law Journal* 11, no. 4 (Summer 1997): 667-708].

Variables Used in the Analysis

Variables are organized in four groups: demographics, social ties, criminal history (which pertains only to the criminal alien group), and factors related to immigration proceedings.²⁰

Demographics

- Age
- Gender
- Nationality

Although we report percentages for the largest nationality groups in each of our comparison tables, we do not use nationality as a variable in our bivariate or multivariate analyses. We did a preliminary evaluation of nationality and found that while it first seemed that nationality was correlated with appearance, it turned out that nationality was reflecting some other variable and it was that variable that mattered and ought to be considered. One such variable is family ties—while it seemed that nationality was affecting successful completion, it turned out that the underlying factor was the strength of family and community ties in the United States.

Social Ties

In general, we expected that these variables would represent more of a connection to the United States, and more of an understanding of the importance of appearing at court proceedings, and thus would be positively correlated with successful completion.

- Length of time in the United States
- Family in New York (yes or no)
- Spouse or child in the United States (yes or no)
- Immigrant status (lawful permanent resident—LPR—or not)
- Has citizen or LPR family member (yes or no)

United States Criminal History (criminal aliens only)

We expected that people with a longer or more serious criminal history, especially those with criminal convictions that would make them ineligible for relief, would be less likely to complete successfully.

- Aggravated felony INS charge (yes or no)
- Drug-related INS charge (yes or no)
- Number of criminal convictions
- Previous criminal bench warrants (yes or no)

Immigration Proceedings

We thought that people who received assistance during proceedings (AAP participants and people with lawyers) would be more likely to complete

²⁰ We describe the variables used, their source, and how they are measured in detail in Methods Appendix II.

successfully, as might people who had more of a stake in appearing (for example, those who had applied for relief).

- Manner of release/supervision (is or is not an AAP participant)
- Level of supervision (high-priority or low-priority)
- Legal representation (retained legal representation or completed without legal counsel)
- Relief application (applied or did not apply for relief, not including voluntary departure)
- Family case (in proceedings as an individual or as part of a family—this applies only to some asylum seekers)
- Time waiting for first hearing
- Time between first and last hearing
- Number of hearings

Methods of Analysis

We began the analysis of each group (asylum seekers, criminal aliens, and undocumented workers) with comparison of appropriate variables across all AAP participant and comparison groups. We created a comparison table for each group, showing percentage or median distributions of each variable of interest for each subgroup.²¹ The comparison tables and explanatory notes are presented in Methods Appendix III.

Next we selected variables that were of interest and that had sufficient non-missing data to use them in the analysis. Variables we had for all or most of the sample include age, time in the United States, gender, nationality, immigration status, INS charges, legal representation, application for relief, and immigration court hearings dates and outcomes, as well as priority (high or low) and whether or not the noncitizen participated in the AAP. This information came from a combination of EOIR, INS, and AAP data. Variables for which information was unavailable for many people were those about family ties, education, and occupation; these variables came from AAP data and were available only for those people who were interviewed by AAP intake screeners. For criminal aliens we were missing specific information about total number of criminal convictions, previous bench warrants, and descriptions of criminal convictions for all but a small number of AAP participants and comparison individuals whose files were reviewed by AAP intake screeners at Varick and JFK. We had no information about illegal employment, and very little on legal employment (applies only to LPRs).

Using available variables, we conducted a bivariate analysis (between each variable and successful completion) to determine which ones were correlated. For example in the bivariate analysis for gender, we looked to see if men were significantly more likely to complete successfully than women, or vice versa. We analyzed high- and low-priority noncitizens separately for asylum seekers and undocumented workers; for

²¹ Control and comparison subgroups are presented in the comparison tables to give a detailed description of our sample. However, because of the small sizes of most of the subgroups, we combine control and comparison groups for analysis unless otherwise noted.

criminal aliens where there were too few intensive AAP participants, we conducted a combined analysis.

Having established which variables were associated with successful completion, we conducted a multivariate logistic regression for each group. With this technique, we were able to isolate the independent effect of each variable. For example, if AAP participation were in a model with gender and family ties, we would want to examine whether AAP participants did better whether they were men or women, or whether they had family ties or not. If AAP participation had an effect in every category, then we concluded that it had an independent effect. In addition to logistic regression we used multivariate contingency tables. The combination of these techniques yielded the results reported below.

All tables and a fuller elaboration of methods can be found in the Methods Appendices at the end of the report.

SECTION B: ASYLUM SEEKERS

Introduction

The asylum seekers in our sample entered the United States through JFK airport (one entered through Newark airport). They arrived without travel documents or attempted to use fraudulent documents to obtain legal entry. Upon their initial contact with INS officials, they expressed a fear of returning to their home countries. Under procedures in effect when the AAP began, an INS official then made a decision about whether or not to detain them.

With the implementation of expedited removal on April 1, 1997, the INS was required by law to consider asylum seekers high-priority cases and use detention bed space for this population. In most districts around the United States, the INS paroled many asylum seekers who are found to have a credible fear of persecution. In the New York district, however, most asylum seekers are detained throughout their proceedings.²² From August 1998 to October 1999, the INS did release a considerable number of asylum seekers from the Wackenhut detention facility in Queens to the AAP for intensive supervision.

Although most are detained at the time of entry, both before and after the advent of expedited removal, the INS has released some asylum seekers from JFK airport on "humanitarian" grounds. These low-priority asylum seekers are released before credible fear has been established, they are given a court date, and they attend their immigration hearings while living in the community.

Research Questions for Asylum Seekers

Asylum seekers in our sample were released from INS custody in all of the ways mentioned above: some were never detained by the INS, some were paroled without supervision, and others were released to AAP supervision. Our research seeks to answer the following questions: what happens to asylum seekers when they are released from INS custody? Do they attend their immigration court hearings and complete their cases? And then, do they comply with their final court order? What strategies can the INS implement to make informed and effective release decisions about newly arrived asylum seekers? And finally, what level of supervision do asylum seekers require in order to comply with court orders at acceptable rates?

Characteristics of Asylum Seekers in the Sample

Most of the asylum seekers in our sample are newly arrived to the United States. Other than their short time in the United States, they are an extremely diverse group. They come alone and in family groups. Their ages range from three to 74 years, with a median age of 29. They come from all parts of the world including Asia, Africa, Eastern

²² Lawyers Committee for Human Rights, *Refugees Behind Bars: The Imprisonment of Asylum Seekers in the Wake of the 1996 Immigration Act*, August 1999.

Europe and Latin America; people from the Balkan region and Sri Lankan nationals are the two largest nationality groups in our sample.

High-priority cases make up the majority of our sample of asylum seekers (82%). Demographic differences between high- and low-priority groups are as follows: 31% of low-priority cases were travelling in family groups (as compared to 7% of high-priority cases) and 28% were children under the age of 18. The low-priority asylum seeker group had larger proportions of women; high-priority cases were mostly men. These differences reconfirm the information that the AAP gathered at the airport; low-priority asylum seekers are released on “humanitarian grounds” and the INS may have found it difficult or costly to detain them.

Composition of Asylum-Seeking Groups

The sample comprises AAP participants and comparison group members who at the time of entry to the United States were identified as asylum seekers by the INS.²³ It includes the following:

High-Priority Groups

- Participant group: detained, then released to AAP intensive supervision.
- Comparison group: detained after expedited removal began, then paroled from the detention facility in Elizabeth, New Jersey with no supervision program.

Low-Priority Groups

- Participant group: released on recognizance, joined AAP, and received regular supervision.
- Control and comparison groups: released on recognizance with no supervision program.
 1. Declined participation group: invited to join AAP, but declined.
 2. No contact group: invited to join AAP, but did not contact AAP staff.
 3. Randomized control group: AAP assigned some to the control group and others to the participant group (who either became AAP participants, part of the declined participation group, or part of the no contact group).

²³ See Methods Appendix II for greater detail on how individuals were assigned to groups.

Asylum Seeker Appearance and Compliance Rates

Attendance at Court Hearings

Asylum seekers in our sample attended their required court hearings at high rates, except for the low-priority group without supervision. Figures A-1 and A-2 show that both high- and low-priority asylum-seeking AAP participants attended hearings at significantly higher rates than their comparison groups.²⁴

Figure A-1: Continuous Appearance at Hearings by 3/31/00, High-Priority Asylum Seekers

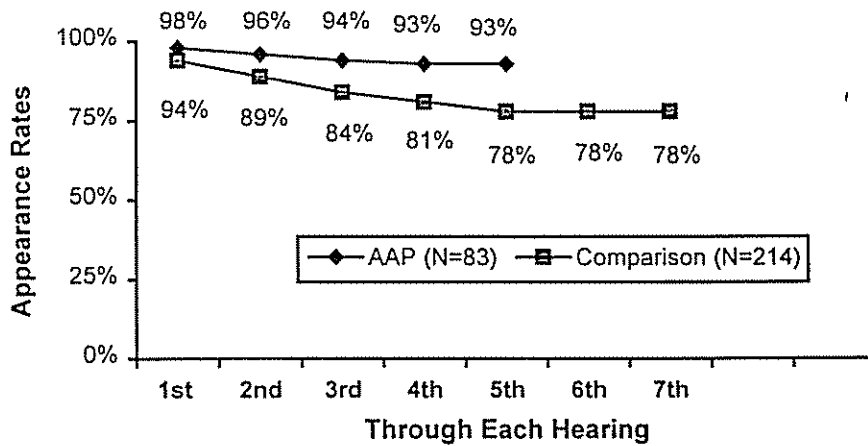
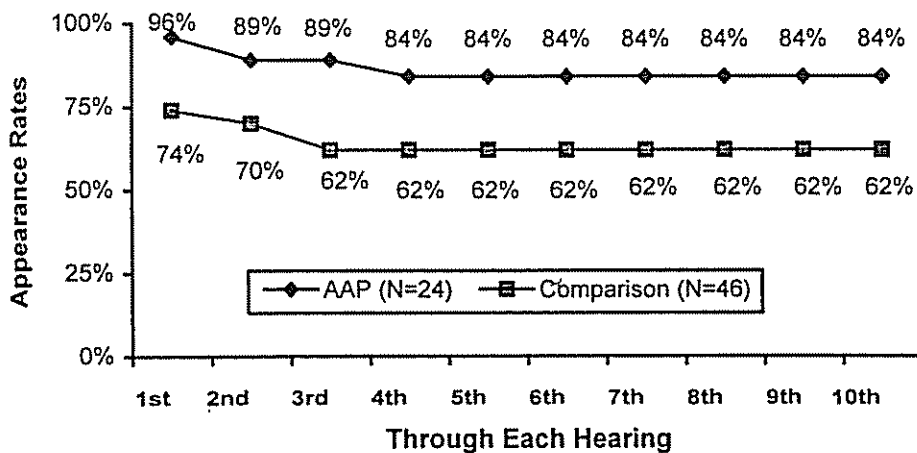


Figure A-2: Continuous Appearance at Hearings by 3/31/00, Low-Priority Asylum Seekers



²⁴ The difference for high-priority is significant at the .01 level; the difference low-priority is significant at the .10 level.

Final Court Orders

Both AAP participant groups were significantly less likely than their comparisons to be ordered removed in absentia, as Table A-3 shows.²⁵ Fifty-four percent of all asylum seekers were allowed to remain in the United States. There was no significant difference in the likelihood that members of the high-priority participant or comparison groups would receive a decision from an immigration judge allowing them to remain in the United States. However, the low-priority AAP participants were significantly more likely than their comparison group to be allowed to stay in the country (63% to 39%).²⁶

Table A-3: Final Court Orders for Asylum Seekers

Final Court Orders		High Priority		Low Priority	
		AAP	Comparison	AAP	Comparison
	N	50	189	19	33
Allowed To Stay in U.S.	Relief Granted	38%	34%	21%	12%
	Case Terminated	4%	14%	16%	0
	Miscellaneous Decisions*	6%	9%	26%	27%
Required To Leave U.S.	Voluntary Departure	2%	0	0	0
	Ordered Removed	38%	22%	21%	18%
	Ordered Removed in Absentia	12%	21%	16%	42%

Results may not add to 100% because of rounding.

*Miscellaneous decisions include administrative closures, other decisions, other completions and failure to prosecute cases.

Compliance with Final Court Orders

We analyze compliance with final court orders only for the high-priority groups. Figure A-4 shows that asylum seekers comply at very high rates. The participant compliance rate exceeded that of the comparison group but the difference could be due to chance.²⁷ Of the 61 participants and comparison group members who were ordered removed while present in court, only three participants had required departure dates before March 31, 2000 and all three departed as required. Of the remaining 58, 45 were appealing the immigration judge's decision and 13 were awaiting a deportation surrender date. The latter group had been waiting to be directed to surrender for a median of ten

²⁵ The difference is significant at the .10 level for high-priority asylum seekers and at the .05 level for low priority.

²⁶ The difference is significant at the .10 level.

²⁷ One asylum-seeking participant was recorded as an absconder by the INS although the AAP confirmed his departure from the country. It is quite possible that the INS is underreporting the compliance of the comparison group members, but we have no data to confirm this.

Final Court Orders

Both AAP participant groups were significantly less likely than their comparisons to be ordered removed in absentia, as Table A-3 shows.²⁵ Fifty-four percent of all asylum seekers were allowed to remain in the United States. There was no significant difference in the likelihood that members of the high-priority participant or comparison groups would receive a decision from an immigration judge allowing them to remain in the United States. However, the low-priority AAP participants were significantly more likely than their comparison group to be allowed to stay in the country (63% to 39%).²⁶

Table A-3: Final Court Orders for Asylum Seekers

Final Court Orders		High Priority		Low Priority	
		AAP	Comparison	AAP	Comparison
	N	50	189	19	33
Allowed To Stay in U.S.	Relief Granted	38%	34%	21%	12%
	Case Terminated	4%	14%	16%	0
	Miscellaneous Decisions*	6%	9%	26%	27%
Required To Leave U.S.	Voluntary Departure	2%	0	0	0
	Ordered Removed	38%	22%	21%	18%
	Ordered Removed in Absentia	12%	21%	16%	42%

Results may not add to 100% because of rounding.

*Miscellaneous decisions include administrative closures, other decisions, other completions and failure to prosecute cases.

Compliance with Final Court Orders

We analyze compliance with final court orders only for the high-priority groups. Figure A-4 shows that asylum seekers comply at very high rates. The participant compliance rate exceeded that of the comparison group but the difference could be due to chance.²⁷ Of the 61 participants and comparison group members who were ordered removed while present in court, only three participants had required departure dates before March 31, 2000 and all three departed as required. Of the remaining 58, 45 were appealing the immigration judge's decision and 13 were awaiting a deportation surrender date. The latter group had been waiting to be directed to surrender for a median of ten

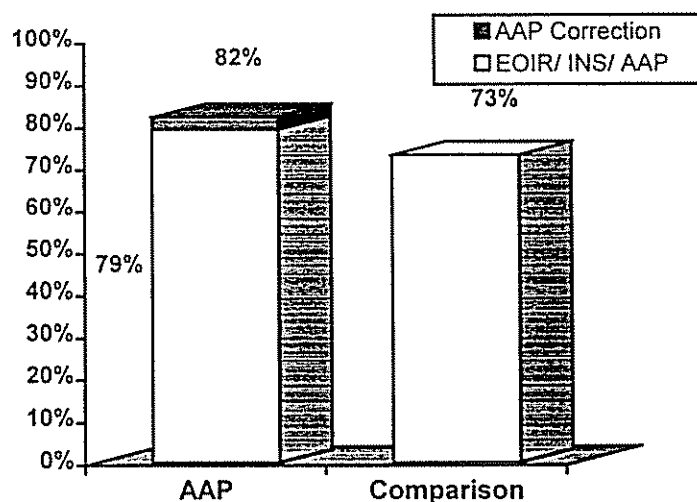
²⁵ The difference is significant at the .10 level for high-priority asylum seekers and at the .05 level for low priority.

²⁶ The difference is significant at the .10 level.

²⁷ One asylum-seeking participant was recorded as an absconder by the INS although the AAP confirmed his departure from the country. It is quite possible that the INS is underreporting the compliance of the comparison group members, but we have no data to confirm this.

months. Therefore, most of the asylum seekers who complied with final orders were allowed to remain in the country. Most of the absconders failed to appear in court to complete their cases, and were ordered removed in absentia. Thus, by and large, those who have been ordered removed while present in court could not be included in the analysis.

Figure A-4: Confirmed Compliance with Final Court Orders, High-Priority Asylum Seekers



N=34 AAP participants; 146 comparison group members
 Data sources: EOIR/INS with AAP data for participants' missing compliance data and to correct for INS underreporting.

Factors in Successful Case Completion

Having examined appearance and compliance rates, we now analyze factors correlated with successful case completion. We include only those asylum seekers who received a final decision by an immigration judge as of March 31, 2000. For this analysis, we removed all children who were travelling with adult family members (see Methods Appendix I for detailed explanation). We therefore removed two Elizabeth comparison group members, six AAP regular participants, and seven low-priority comparison group members from this analysis. There were no AAP intensive participants under the age of 18 and travelling with an adult family member.

The most important finding in our research on asylum seekers is that overall they successfully complete their court cases at very high rates and these rates remain high regardless of any other factors, including participation in the AAP. Asylum seekers come to the United States asserting that they are fleeing persecution or danger in their countries of origin and are seeking protection. When they are placed in proceedings, they understand that they must seek this protection through the U.S. justice system and attend

immigration court hearings. Our research indicates that most follow through with their obligations to immigration court. Furthermore, 55% of asylum seekers in our sample received decisions allowing them to remain in the United States. However, because most asylum seekers appeal unfavorable decisions and the INS has not issued notices of surrender in a timely fashion, we do not have information on how frequently the remaining 45% (less grants of relief on appeal) will comply once they are required to depart the United States.

Making Release Decisions

In this analysis we consider the variables that screeners could consider at the time of release. We discuss high- and low-priority groups separately because it might not be practical to detain many low-priority asylum seekers.

High Priority

All high-priority asylum seekers in our sample (AAP intensive participants and Elizabeth parolees) passed their credible fear screens and had their community ties verified through the AAP intake screen or through the submission of parole applications. Both methods resulted in high successful completion rates. Of the two methods of determining eligibility for release, however, AAP's community ties screen yielded higher rates.

Of the demographic variables we examined, age and gender were not correlated with successful completion. We found that all groups of asylum seekers successfully complete at very high rates with one exception. One subgroup of the comparison group successfully completed at low rates because they found themselves in the United States by happenstance. The AAP intake screeners at Wackenhut found that most people in this group had fled their home country with the goal of reaching Canada. However, because their overseas flights landed in New York and because New York does not have a transit lounge, they were required to go through immigration inspection. If travelling without documents or with fraudulent documents, they were arrested and placed in proceedings. Because they did not have sufficient community ties in the United States and because some explicitly stated that they were in transit to Canada, they were not eligible to participate in the AAP intensive program. Members of this subgroup however, were paroled from Elizabeth.

We assume that the low successful completion rate (54%) of this subgroup of comparison group members can be attributed to the same intent to seek asylum in Canada. The INS use of parole applications to measure community ties was not sufficient in itself to screen out people who were in transit to Canada. However, for groups of people who wanted to remain in the United States, the parole application was an effective screen. If the comparison group members we believe were most likely in transit to Canada are removed from the analysis, the Elizabeth parolee group's successful completion rate increases from 79% to 90%, higher than the 88% rate for AAP participants.

Our research confirms that an effective screen for release will establish that the asylum seeker has sufficient ties to be able to follow through with immigration court obligations. After this level of screening, neither detention nor monitoring the appearance rates of asylum seekers is necessary.

Low Priority

This small group was released without passing a credible fear screen and before verification of community ties. AAP participants completed successfully at higher rates than those released on recognizance without supervision. However, the control group is very small and the increased successful completion rates of AAP's regular participants might be explained by self selection in that people who are planning to appear may be more likely to participate in the AAP. Therefore, we cannot conclude that the regular program had an independent effect on successful case completion.

How Much Supervision Do Asylum Seekers Need?

Our analysis indicates that participation in the AAP did not have an independent effect on successful completion for asylum seekers. The key to supervising asylum seekers seems to be screening, especially in-depth verification of community ties.

After the initial screen, should asylum seekers be released with or without supervision? Our research indicates that asylum seekers do not need to be monitored to ensure that they will attend their immigration court hearings. We do not have information, for the reasons explained above, about how well asylum seekers leave the country if required to do so. Under the assumption that compliance with orders of removal could be problematic, a supervision program could play a role in keeping track of asylum seekers until they receive their final decision. If they are ordered removed by an immigration judge, a supervision program could make decisions or recommendations about redetention, or re-release while the asylum seeker is on appeal.

Besides monitoring, there are other benefits of a supervision program that the INS may want to consider. Our qualitative research on high-priority participants indicates that most asylum seekers benefited from the assistance they received in finding social, medical and educational services. We found that most of the low-priority cases who became AAP participants joined the program before retaining counsel. They seemed unsure about how to go about finding a legal representative, and expressed a desire for the AAP's assistance in pursuing representation. Given that a high proportion of asylum seekers is granted the right to remain in the United States, these contacts and connections with services are good preparation for the future (see *Why Appear at Immigration Court? A Survey of AAP Participants*, Chapter 4).

Conclusions

Asylum seekers do not need to be detained to appear for their hearings. They also do not seem to need intensive supervision. If they had been better screened, the asylum seekers released on parole from Elizabeth would have done just as well as those under

supervision. Detention of asylum seekers is particularly unnecessary and unfair since they are so willing to attend their hearings and since so many of them win their cases. Data are not available, however, to show how well asylum seekers comply with orders to leave the United States. A cost-effective strategy for the INS in future might be to release asylum seekers to a minimal level of supervision, rather than only to parole. This would permit the agency to track the progress of the asylum seekers through their hearings, to maintain contact with them, and to make provisions to redetain those ordered removed at their final hearing. Depending on an assessment of their risk of flight, asylum seekers could be released again to a more intense level of supervision while they appeal the removal order, subject to redetention if they violate the supervision program's rules. This strategy would protect the liberty of those who come to the United States seeking asylum, reduce INS costs, and promote compliance with the law.

SECTION C: CRIMINAL ALIENS

Introduction

Criminal aliens are noncitizens who are subject to removal based on their criminal histories. In New York most of them are lawful permanent residents who have spent much or all of their adult lives in the United States. All criminal aliens in the sample used for this study were apprehended or detained by the INS before the beginning of mandatory detention in October 1998. Until that date the INS generally had the discretion to decide whom to detain and whom to release.

Criminal aliens in the high-priority group had just come out of jail or prison where they had served sentences or been detained for criminal convictions. They were transferred to INS custody and detained at the Varick SPC. Some of them, who were found not to pose a threat to public safety, were later released to the AAP intensive program or on bond. Low-priority criminal aliens were apprehended at JFK airport as they returned from trips abroad; they were then released on recognizance and became eligible for the AAP regular program.

Research Questions for Criminal Aliens

The basic question regarding criminal aliens is whether detention is necessary to prevent them from absconding before completing their court hearings and/or before the date on which they are required to leave the United States. A secondary question is the relative efficacy of the various non-detention strategies available to the INS. Citing high risk of flight and concerns for public safety, Congress has passed legislation mandating that virtually all criminal aliens be detained throughout the course of their proceedings. The INS has publicly stated that it disagrees with stripping the agency of its discretion to release these noncitizens, and that it favors amending the law.²⁸ If the law were amended, the answers to these research questions would have important implications for an INS decision about whether, when, and how to release criminal aliens from detention.

Characteristics of Criminal Aliens in the Sample

The criminal aliens in the sample are predominantly male lawful permanent residents (LPRs) who have family in the local area. Their median age is 36, and their median time in the United States is 14 years. More than one-third are from the Dominican Republic. Other nations with substantial numbers in the sample are Jamaica (13%) and Colombia (7%); the following are represented between 2 and 5%: Ecuador, Guyana, Dominica, Haiti, Nigeria, Trinidad and Tobago.

²⁸ Commissioner Meissner has confirmed that, while the new law is in effect, the removal of noncitizens who have committed crimes in the United States is the INS' top enforcement priority. (See previously cited *Testimony of Doris Meissner, Commissioner, Immigration and Naturalization Service, Concerning INS Reform: Detention Issues*, 1998).

We found some differences between the high- and low-priority criminal aliens in the sample. Low-priority cases were more likely to be LPRs (96%) compared to 84% of high-priority cases. There were also more women in the low-priority group than in the high-priority group (24% compared to 4%), and more Dominicans (42% compared to 35%). The low-priority group had been in the United States for somewhat fewer years (a median of 13 years compared to 16 years for the high-priority group.)

However, we found few consistent differences in the criminal histories of the high- and low-priority group members. While more than two-thirds of the high-priority criminal aliens were charged as aggravated felons and none of the low-priority criminal aliens were, this in part was the result of the legal provisions under which they were charged.²⁹ The high-priority criminal aliens were more likely to have at least one drug-related charge against them than those in the low-priority group (60% compared to 51%). On the other hand, while our data are limited, other differences in the criminal histories of the high- and low-priority groups did not go in the direction we expected. The low-priority group had a higher median number of criminal convictions per person (three compared to two), and a higher proportion of people with past bench warrants (64% compared to 38%).³⁰ It may be that the high-priority criminal aliens in our sample, all of whom were released by the INS, have more in common with the low-priority sample than they do with the high-priority individuals the INS did not release from detention.

Composition of Criminal Alien Groups

The criminal alien sample comprises AAP participants and comparison group individuals (either detained and later released, or never detained).³¹ It includes the following:

High-Priority Groups

- Participant group: detained at Varick, then released to AAP intensive supervision.
- Control and comparison groups: detained, then released on bond with no supervision program.
 1. INS rejected group: deemed eligible for the AAP and agreed to participate. Vera recommended them for AAP participation. The INS declined to release them to supervision, but later released them on bond.
 2. Not screened group: detained, then transferred to another facility before the AAP was able to complete the intake screen. Later they were released on bond from the transfer detention facility.
 3. Screened ineligible group: screened ineligible to participate in the AAP intensive supervision program (i.e., did not meet the AAP's screening criteria),

²⁹ The low-priority criminal aliens were charged under provisions of the law that do not include aggravated felony charges. High-priority criminal aliens were charged under provisions that do include these charges. Peter Schuck points out that the exclusion of the aggravated felony charge for inadmissible criminal aliens is most likely an oversight and that the law could be amended to include this charge. (See previously cited *INS Detention and Removal: A "White Paper"*, 1997).

³⁰ The data concerning total number of criminal convictions are available for 75 individuals; data concerning bench warrants are available for 74 individuals. However, in both cases data are available for at least some people in all participant and comparison groups.

³¹ See Methods Appendix II for greater detail on how individuals were assigned to groups.

but were later released by the INS on bond. (This comparison group is not used for the impact evaluation but is used in assessing factors for successful completion.)

Low-Priority Groups

- Participant group: released on recognizance from JFK airport, voluntarily joined the AAP and received regular supervision.
- Control and comparison groups: released on recognizance from JFK airport with no supervision program.
 1. Declined participation group: invited to join AAP but declined.
 2. No contact group: invited to join the AAP, but did not contact AAP staff.
 3. Randomized control group: each time AAP intake staff reviewed A-files at JFK, they assigned some to the control group and others to the participant group. (Those assigned to the participant group became part of the AAP, the declined participation, or the no contact groups.)

Criminal Alien Appearance and Compliance Rates

Attendance at Court Hearings

Criminal aliens—whether they were AAP participants or were released on bond or recognizance—attended their hearings at high rates. The participants achieved the highest rates and the difference is significant for the low-priority groups.³²

Figure C-1: Continuous Appearance at Hearings by 3/31/00, High-Priority Criminal Aliens

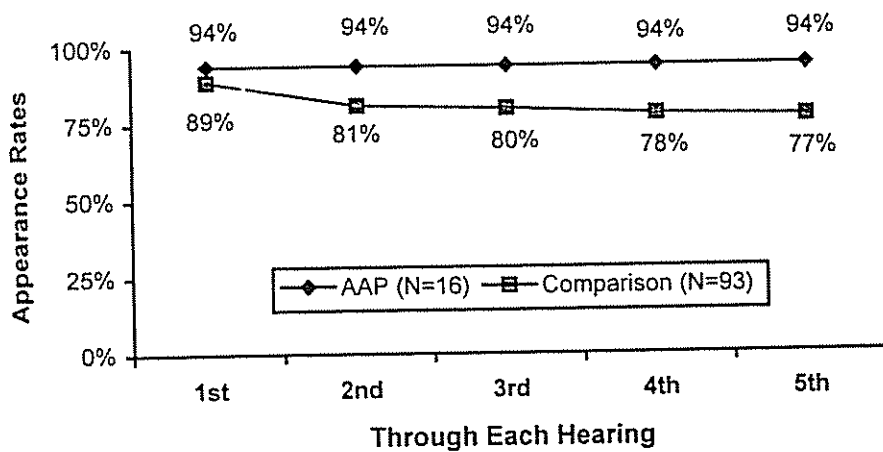
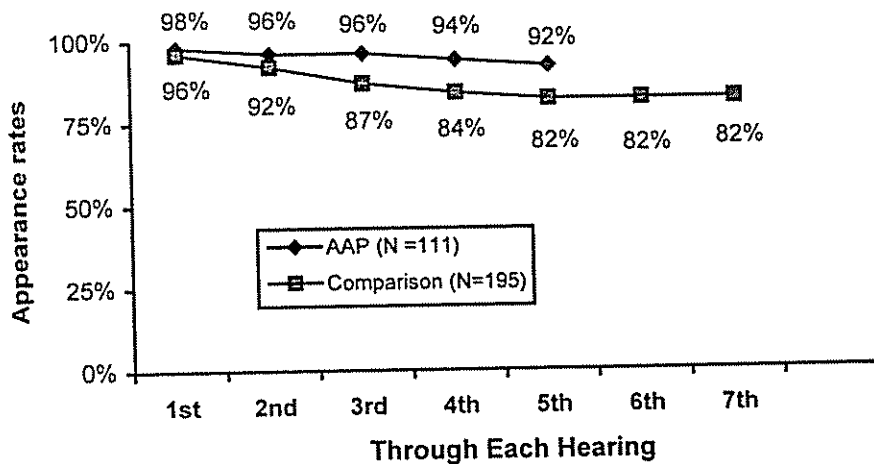


Figure C-2: Continuous Appearance at Hearings by 3/31/00, Low-Priority Criminal Aliens



³² The difference is significant at the .01 level.

Final Court Orders

The criminal aliens in the AAP intensive participant group had lower percentages of orders of removal in absentia than the comparison group but this difference could be due to chance. Forty percent of the participants were allowed to remain in the United States; in the comparison groups only 13% were.³³ To some degree, this is a result of AAP screening because eligibility for relief was used as a screening criterion.

Some of the patterns seen among the high-priority criminal aliens also occurred in the low-priority group and here the number of participants is more substantial. Low-priority participants were significantly less likely to be ordered removed in absentia than comparison group members.³⁴ A high proportion of all low-priority criminal aliens were allowed to stay in the United States, including 63% of the participants and 49% of the comparison group members.³⁵

Table C-3: Final Court Orders for Criminal Aliens as of 3/31/00

Final Court Orders		High Priority		Low Priority	
		AAP	Comparison	AAP	Comparison
	N	10	73	70	137
Allowed To Stay in U.S.	Relief Granted	30%	5%	13%	12%
	Case Terminated	10%	4%	33%	28%
	Miscellaneous Decisions*	0%	4%	17%	9%
Required To Leave U.S.	Voluntary Departure	10%	3%	3%	1%
	Ordered Removed	40%	55%	23%	25%
	Ordered Removed in Absentia	10%	29%	11%	25%

Results may not add to 100% because of rounding.

*Miscellaneous decisions include administrative closures, other decisions, other completions, and failure to prosecute cases.

³³ The difference is significant at the .05 level.

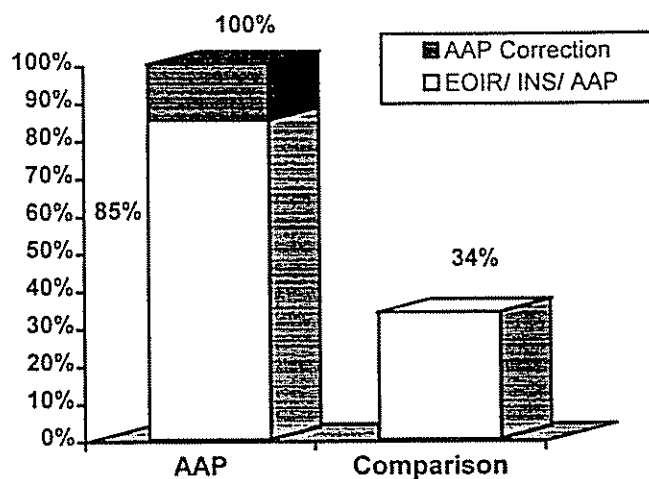
³⁴ The difference is significant at the .05 level.

³⁵ The difference is significant at the .05 level.

Compliance with Final Court Orders

All of the small number of high-priority AAP participants complied with their final court orders, but only one-third of the comparison group members did.³⁶ This difference could be due to chance, primarily because the participant numbers are small. Very few criminal aliens (both participants and comparison group members) who were ordered removed while present in court had required departure dates before March 31, 2000; most were either appealing the immigration judge's decision or they are awaiting a notice to surrender.³⁷ Most of those who complied, therefore, were allowed to remain in the country and most of the absconders did not appear in court and were ordered removed in absentia.

Figure C-4: Confirmed Compliance with Final Court Orders, High-Priority Criminal Aliens



N=7 AAP participants; 47 comparison group members
Data sources: EOIR/INS with AAP data for participants' missing compliance data and to correct for INS underreporting.

³⁶ One criminal alien participant was ordered removed in absentia but the AAP had confirmed his departure from the country. Again, it is quite possible that the INS is underreporting the compliance of the comparison groups, but we have no data to confirm this.

³⁷ Two of the four participants who were ordered removed while present in court had required departure dates before March 31, 2000, and both departed; nine of the 40 comparison group members were in this situation, and five departed.

Factors in Successful Case Completion

Having presented an overview of the impact evaluation results for criminal aliens, we now seek to account for variation between those who attend all required hearings, completing their cases successfully, and those who abscond. AAP program participation is one factor we consider, but there are many others as well. This section assesses only individuals whose cases were completed by September 30, 1999, who had INS criminal-related immigration charges that would have made them subject to mandatory detention after October 1998. It also includes individuals from the screened ineligible group who were not included as a comparison group in the impact evaluation. The resulting sample consists of 288 people—120 high-priority and 168 low-priority. (For a description of the make-up of the low-priority and high-priority groups, see Composition of Criminal Alien Groups, above. For a breakdown of the numbers in each of the groups, see the Comparison Table in Methods Appendix III).

In conducting this analysis, we combine the high- and low-priority criminal aliens because of the small number of high-priority AAP participants. Any indication of AAP program effect, therefore, stems primarily from the AAP regular program.

Making Release Decisions

If the law changed and it again became possible to consider release for noncitizens charged as criminal aliens, INS officials would need to decide whom to release as well as the most effective way to release them. In this analysis, we consider the variables that would be known to the INS before a release decision and examine their correlation with successful completion of court cases.

The demographic characteristics of age and gender were not correlated with successful completion. Also not correlated were length of time criminal aliens had been in the United States, the total number of their criminal convictions, and whether or not they had previous bench warrants issued against them.³⁸

There are two additional variables that also do not correlate with successful completion, but, in these cases, the lack of correlation may be due to the lack of variation in the sample. Lawful permanent resident status may be an important factor but non-LPRs make up only 4% of the low-priority group and they all completed successfully. In the high-priority group, non-LPRs make up 16% of the sample and they appeared and completed in significantly lower proportions than did LPRs (63% compared to 84%).³⁹ Family ties in the local area may also be an important variable but, again, there is little variation in the sample.⁴⁰ Among AAP participants, 88% of the low-priority group had

³⁸ We do not have data on conviction histories.

³⁹ The difference is significant at the .05 level. Among the low-priority groups, the proportion of LPRs ranged from 94% to 100%; the proportion in the AAP was 97%. Among the high-priority groups, the proportions ranged from 78% to 100% and the AAP proportion was 80%.

⁴⁰ The specific variable concerning family in New York City is missing for 52% of our sample but it is available for at least some people in every participant and comparison group.

family in New York City as did all of the high-priority participants. The proportions of the control and comparison groups with family in the city ranged from 90% to 100%, except for one of the low-priority comparison groups (those who declined to participate in the AAP), and nearly three-fourths of that group had family in the city. We believe the lack of variation reflects the criteria the INS used to release criminal aliens to supervision, bond, or recognizance.

Among the variables that would be known to the INS at the time a release decision is made, for which there is sufficient data and variation in the sample, only certain aspects of criminal charge and type of priority group affected successful completion. Criminal aliens with non-drug INS charges were more likely to appear than those with drug charges; those charged as aggravated felons were more likely to appear than people with all other types of charges combined; and, related to this, high-priority criminal aliens were more likely to appear than the low-priority group. We believe the results for aggravated felons primarily reflect the strict criteria the INS used before deciding to release any criminal aliens with these charges from detention.

Managing Post-Release Supervision

Statistical analyses revealed that major factors during removal proceedings that increased the likelihood of successful completion are participating in AAP, having legal representation, and applying for relief. The analysis showed that AAP participation had an independent effect on successful completion. This means that criminal aliens released to supervision or never detained who became AAP participants were more likely to appear for their hearings than comparison group individuals with the same demographics, LPR status, and type of charge. It also means that participant criminal aliens who were represented by counsel were more likely to appear than comparison group members who were also represented, and that the same conclusion follows when we consider only criminal aliens who were not represented by counsel (Table C-5).

Table C-5: Percent of Low-Priority Criminal Aliens Who Attended Court Hearings Without Legal Representation

	N	Overall Successful Completion Rate	Persons Without Legal Representation	Successful Completion Rate for Persons Without Legal Representation
Experimental Groups:				
AAP	59	90%	16 (27%)	75%
Declined Participation	32	72%	8 (25%)	30%
No Contact	40	75%	10 (25%)	25%
Summary of Experimental Groups	131	81%	34 (26%)	50%
Control Group	37	70%	10 (27%)	30%

The independent effect of program participation can also be shown by comparing the appearance rates of the regular program's full experimental group and the control group (Table C-5). As noted above, for the low-priority criminal aliens, AAP intake staff reviewed the individuals' files at the airport and then assigned some to the participant group and some to the control group. Some of those assigned to the participant group eventually declined to participate or did not respond to the AAP's written invitation to join. If we consider participants, as well as those who declined or could not be contacted, as the full experimental group, the analysis can minimize the effect of program selection and maximize that of program participation. And, indeed, the experimental group appeared at a rate of 81%, compared to the 70% rate achieved by the control group. In fact, the control and two comparison groups appeared at their hearings at about the same rates, ranging from 70% to 75%, while the participants appeared at a 90% rate.

We also found that the AAP increased the chances that participants would be represented by counsel. Since legal representation was the single factor most correlated with successful completion, this further increased the likelihood that a criminal alien would make all required appearances. The interaction took two forms: the AAP helped participants to find lawyers, and it provided information and support to those who did not.

One of the main services the regular program provided was assistance in retaining legal representation, which is also generally a precursor to applying for relief (75% of those in our sample who had applications on file with immigration court also had a legal representative of record). There is some evidence that AAP supervision provided more of this assistance to criminal aliens than to other participants. AAP staff estimated that they provided assistance in finding lawyers to half the regular program participants

overall (criminal aliens, undocumented workers, and asylum seekers). However, the average was higher for criminal aliens. Staff notes or comments, entered into the AAP database after every contact with a participant, indicate that assistance in finding lawyers was provided to 80% of the regular criminal aliens. The assistance included making multiple referrals, principally to legal agencies; making follow-up calls to attorneys and participants; and making sure that participants kept their appointments with legal representatives. Staff notes also indicate that their contact with participants occurred chiefly in the period leading up to the participants' retention of a lawyer; after that, participants contacted AAP less frequently.

There is some evidence also that the AAP provided additional support to those criminal aliens who did not retain attorneys. Of the 12 participants without legal representation who appeared for all their hearings, eight had an above average number of contacts with the AAP, focusing on information about court, legal referrals, and assistance in attending court.⁴¹

Conclusions

In our sample, criminal aliens achieved high rates of appearance at required hearings. Those in AAP supervision did better than those released on bond or recognizance but still, three-fourths of those released on bond, and 82% of those on recognizance, attended all of their hearings. Furthermore, the criminal aliens who were released on recognizance have a very good chance of receiving court orders allowing them to remain in this country. The absence of data prevents our drawing conclusions about how well criminal aliens leave the country when directed to do so.

While several variables increase the chances that a criminal alien will appear for hearings, AAP participation had an effect over and above, or independent of, these other variables and also interacted with the strongest of them to further increase the likelihood of appearance. These results indicate that mandatory detention of virtually all criminal aliens is not necessary and that some can be released to supervision at both levels of intensity. Indeed, the low-priority group did as well with minimal supervision as the high-priority group did with the more intensive level. The results also indicate that among those criminal aliens the INS released—whether to supervision, bond, or recognizance—most characteristics and situations existing prior to release did not correlate with appearance, and this includes criminal history to the limited degree we can measure it. The important influences on appearance rates occurred after release.

⁴¹ For the remaining four participants, their contact with AAP consisted only of the initial orientation and one or two reminder calls. INS failed to prosecute all four at their first court appearance.

SECTION D: UNDOCUMENTED WORKERS

Introduction

The group of undocumented workers is composed of noncitizens the INS apprehended in work-site enforcement actions between 1997 and 1999. During these years, the agency, which at times detained undocumented workers, had several options for handling these cases. When apprehended, some undocumented workers opted for immediate voluntary return to their countries of origin.⁴² If they declined voluntary return and chose to go through immigration court proceedings, the INS at times decided to immediately release some of them on recognizance. Some of those released on recognizance in the New York district became AAP regular program participants. In other situations the INS detained them until they either posted bond or completed their court proceedings. Finally, in the New York district, some were detained and later released to AAP intensive supervision.

Research Questions for Undocumented Workers

The INS believed that most undocumented workers released on recognizance would abscond. On the other hand, detention space is limited and often needed for higher priority cases. Assuming that the undocumented workers are going to be apprehended, placed in proceedings, and then released, how can the INS ensure the highest possible rates of attendance at court hearings and compliance with final court orders?

Characteristics of Undocumented Workers in the Sample

As a group, the undocumented workers—including all participant and comparison groups—were predominantly Mexicans or Ecuadorians in their late twenties who had been in the United States for five years on average. (For more detail, see the Undocumented Workers Comparison Table in Appendix III.)

In our sample, the high-priority group members are those who were detained and then released either to the AAP or on bond; the low-priority group members are those who were never detained. With regard to demographic characteristics, the high-priority group had a lower percentage of women than the low-priority group (21% compared to 63%). One explanation for this difference is the lack of bed space for women at the Elizabeth detention facility, where the INS detains individuals apprehended in work-site enforcement actions. Also, women might be the primary caregivers for young children, and in that case, the INS would release them on recognizance.

With regard to social ties, the high-priority group had a lower percentage of married/family people (54% compared to 63% for the low-priority group), people with a spouse and/or child in the U.S. (26% compared to 40%), and people with a U.S. citizen or LPR family member (19% compared to 27%). These factors may have contributed to the INS decision to make them high-priority.

⁴² Those who chose voluntary return remained in custody while the INS arranged for their transportation.

Composition of Undocumented Worker Groups

From 1997 through 1999, the INS invited AAP intake screeners to attend individual enforcement actions. We created the following groups for research purposes:⁴³

High-Priority Groups

- Participant group: detained, then released to AAP intensive supervision.
- Control and comparison groups: detained, then released on bond with no supervision program.
 1. INS rejected group: AAP recommended these people for participation in the program after they had been found to be eligible and had agreed to participate, but the INS declined to release them to supervision; later the INS released them on bond.
 2. Randomized control group: AAP assigned some individuals, who had been found to be eligible for the program and had agree to participate, to the control group and some to the participant group (who became AAP participants or part of the INS rejected group).
 3. Comparison group: Early in the study we discovered that some of the people in the randomized control group were acquainted with people in the AAP participant group, and we were concerned they would influence one another; we asked the INS to send us data for people in enforcement actions where the INS had *not* called the AAP—and these became the comparison group.

Low-Priority Groups

- Participant group: released on recognizance, joined AAP, and received regular supervision.
- Control and comparison groups: released on recognizance with no supervision program.
 1. Declined participation group: invited to join AAP, but declined.
 2. Randomized control group: AAP assigned some to the control group and others to the participant group (who became AAP participants or part of the declined participation group).
 3. Comparison group: people apprehended in enforcement actions where the INS did not notify the AAP.

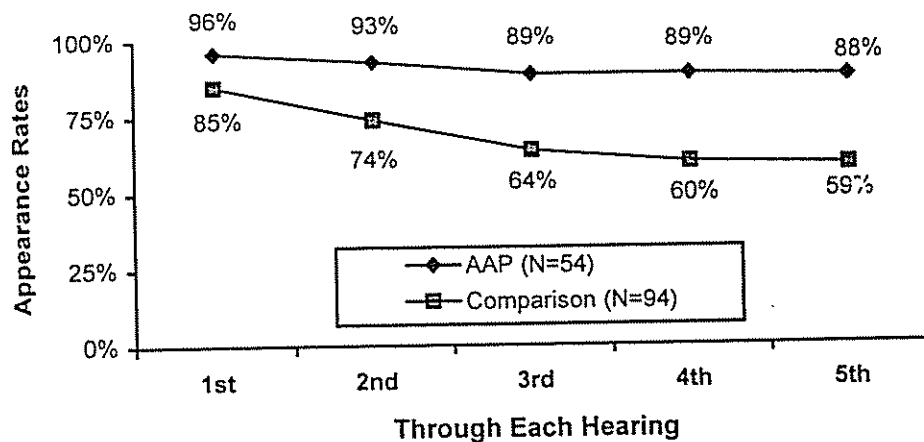
⁴³ See Methods Appendix I for greater detail on how individuals were assigned to groups.

Undocumented Workers' Appearance and Compliance Rates

Attendance at Court Hearings

Among all of the undocumented worker groups, high-priority AAP participants had the highest rate of continuous appearance (Figure W-1). Eighty-eight percent of high-priority participants attended all of their hearings.⁴⁴ Comparison groups released on bond attended their first hearing at high rates (85%); however, their appearance rate by the last hearing fell below 60%. This is a more dramatic difference between the participants and comparison groups than occurred with asylum seekers or criminal aliens. The undocumented workers on bond do much worse than the asylum seekers and criminal aliens on parole or bond, but in intensive supervision they do about as well as the other noncitizen groups.⁴⁵

Figure W-1: Continuous Appearance at Hearings by 3/31/00, High-Priority Undocumented Workers

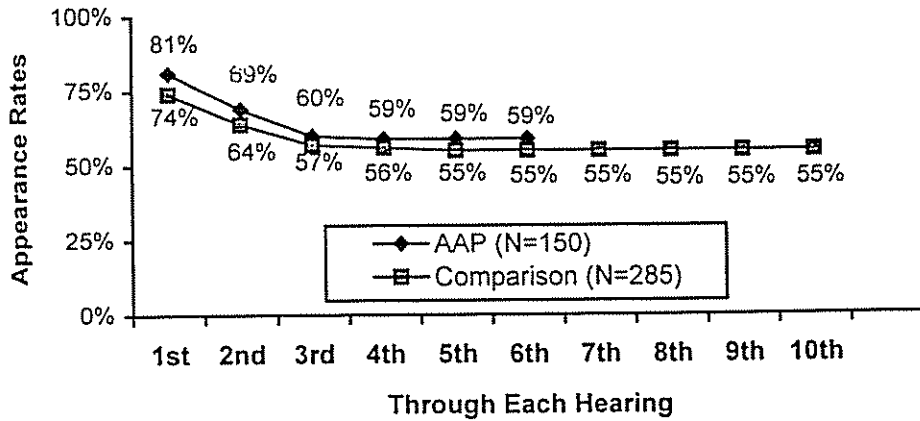


⁴⁴ The difference is significant at the .05 level for the first hearing and at the .01 level for the second through fifth hearing.

⁴⁵ A 1989 U.S. GAO study previously cited reported findings that were consistent with our own: (1) The noncitizens least likely to appear at required immigration court hearings were those who entered the United States illegally (without inspection as opposed to being stopped at the airport), which describes undocumented workers and (2) bond did not ensure their appearance but most would appear for a 1st hearing before dropping out, which describes the comparison group (as opposed to supervised AAP participants). (See *Immigration Control: Deporting and Excluding Aliens from the United States*, 1989).

Low-priority AAP participants attended their first hearing within the same range as people released on bond (81%; see Figure W-2). The appearance rate at the first hearing for the other groups released on recognizance was 74%. All low-priority groups, whether or not they participated in the program, had appearance rates below 60% by the last hearing.

Figure W-2: Continuous Appearance at Hearings by 3/31/00, Low-Priority Undocumented Workers



Final Court Orders

Table W-3 shows the final court orders the undocumented workers in our sample received as of March 31, 2000. Both high- and low-priority participant groups were less likely than their comparisons to be ordered removed in absentia, and the difference is statistically significant for the high-priority group.⁴⁶ High-priority participants were significantly more likely than the comparison group members to receive voluntary departure.⁴⁷

Table W-3: Final Court Orders for Undocumented Workers as of 3/31/00

Final Court Orders		High Priority		Low Priority	
		AAP	Comparison	AAP	Comparison
N		49	93	138	349
Allowed To Stay in U.S.	Relief Granted	2%	1%	0	1%
	Case Terminated	4%	1%	2%	3%
	Miscellaneous Decisions*	4%	0	7%	4%
Required To Leave U.S.	Voluntary Departure	78%	53%	47%	42%
	Ordered Removed	0	4%	1%	4%
	Ordered Removed in Absentia	12%	41%	42%	47%

Results may not add to 100% due to rounding.

*Miscellaneous decisions include administrative closures, other decisions, other completions, and failure to prosecute cases.

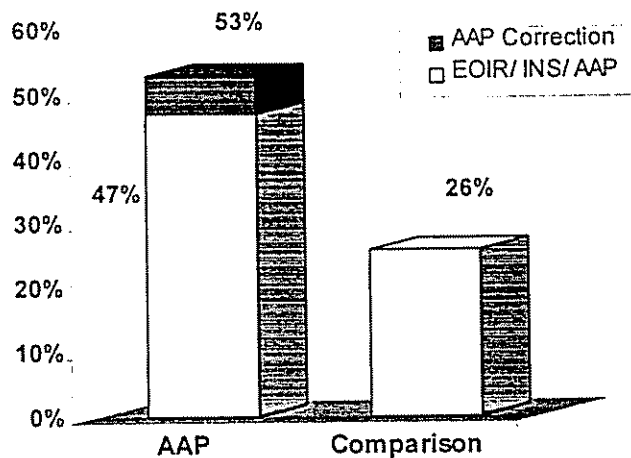
⁴⁶ The difference is significant at the .001 level.

⁴⁷ The difference is significant at the .05 level.

Compliance with Final Court Orders

High-priority participant undocumented workers were confirmed to have complied at twice the rate of those in the comparison groups, and the differences are statistically significant.⁴⁸ If we rely on INS data, and use AAP data only for participants whose compliance status is still unknown to the INS, 47% of the participants complied. This increases to 53% when AAP data are used to correct for INS underreporting (see Figure W-4).⁴⁹ Only about one-quarter of the comparison group members complied.⁵⁰ Most of the participants who absconded failed to comply with voluntary departure orders; most of the comparison group members who failed to comply were ordered removed in absentia.

Figure W-4: Confirmed Compliance with Final Court Order, High-Priority Undocumented Workers



N=43 AAP participants; 86 comparison group members.

Data sources: EOIR/INS with AAP data for participants' missing compliance data and to correct for INS underreporting.

⁴⁸ The difference is significant at the .001 level.

⁴⁹ Three undocumented worker participants were recorded as absconders by the INS although AAP had confirmed their departure from the country. Again, it is quite possible that the INS is underreporting the compliance of the comparison groups, but we have no data to confirm this.

⁵⁰ As a comparison, in the previously cited study of the enforcement of voluntary departure orders conducted in 1999, the U.S. Department of Justice Office of the Inspector General found that 30% of its sample departed as required. (See *Voluntary Departure: Ineffective Enforcement and Lack of Sufficient Controls Hamper the Process*, 1999).

Factors in Successful Case Completion

The following analysis, based on data for the undocumented workers who completed their cases as of September 30, 1999, seeks to account for the different patterns of successful case completion. The sample includes 134 high-priority undocumented workers (46 AAP participants and 88 comparison group members), and 422 low-priority workers (127 AAP participants and 295 comparison group members).

In considering the variables associated with successful completion, we distinguish between those that could be known to the INS before it makes a decision to release an undocumented worker and those that could be known and monitored while the individual is in removal proceedings.

Making Release Decisions

When INS officials make decisions about detaining or releasing undocumented workers, they have information about the individuals' demographic characteristics, such as age and gender; social characteristics, such as the length of time they have been in the United States; whether and where they have a nuclear family; and the immigration status of their families. We examined how these characteristics are correlated with successful completion of court cases for both the high- and low-priority groups.

High-Priority Groups

Demographic characteristics were not associated with successful case completion for the high-priority sample—which includes participants and comparison group members. Also not associated were length of time in the United States and having a spouse or child in the United States. In the examination of bivariate relationships, we found that people who successfully completed their court cases were somewhat older and had a family member with legal immigration status in the United States. However, when we conducted the multivariate analysis including these factors and controlling for all factors, these factors did not seem to have a significant effect on successful completion. In other words, when taking into consideration the combination of many factors at the same time, none of the demographic or social-tie variables would be particularly effective for screening purposes.

Our analysis of the group of undocumented workers whom the INS rejected for AAP participation suggests that the INS was more likely to reject workers with less time in the United States and those who were younger, without a spouse or child in the United States, and without a citizen or LPR family member. (See the Undocumented Worker Comparison Table in Appendix III.). These are characteristics the INS seems to have associated with risk of flight. Yet the INS eventually released these people on bond and they appeared only 55% of the time (see Table W-5). On the other hand, AAP intensive participants with less time in the United States and without family support (neither a spouse and/or child in the United States nor a citizen or LPR family member) had an 88% rate of successful completion, equivalent to the intensive group as a whole. This suggests that an intensive supervision program promotes successful case completion by people

with a variety of characteristics, including characteristics that, in other circumstances, are associated with absconding.

Low-Priority Groups

For the low-priority groups, some demographic/social tie variables appeared to be associated with successful completion. These were being female, having spent a greater length of time in the United States, having a spouse and/or child in the United States, and having a U.S citizen or LPR family member. However, as in the case of the high-priority group, when we conducted the multivariate analysis, we found that no single factor emerged as having an independent and significant effect on successful completion. The variables showing the greatest (but not statistically significant) effect were the social-tie variables, suggesting that they not be ruled out at this time and that they be tested in future analyses where information is available for a larger number of people.

Furthermore, the bivariate relationships can be better understood in this light. The gender effect seen above can be explained by the fact that women in our sample have more social ties—more of them have a spouse and/or child in the United States and more of them also have U.S. citizen or LPR family members. Moreover, having more social ties, along with having a higher rate of legal representation (which we discuss in more detail below), accounts for any nationality difference that emerged in the analysis.

Managing Post-Release Supervision

In addition to demographic and social characteristics, we examined the relationship between successful case completion and factors associated with removal proceedings, such as AAP participation, having a legal representative, applying for relief, and amount of time spent waiting for the first hearing.

High-Priority Groups

The results of our analysis show that, for the high-priority groups, being an AAP participant and having a legal representative were associated with successful case completion. Supervision (AAP participation) has a strong independent effect. For example, AAP participants with and without legal representation appeared at higher rates than similarly situated comparison group members.⁵¹ AAP also had a secondary effect by guiding people to legal representation, which also has a strong independent effect on successful completion.

The independent effect of program participation can also be shown by comparing the appearance rates of the intensive program's full experimental group and the control group (see Table W-5). As noted above, for the high-priority undocumented workers, AAP intake staff assigned some of the potential participants (who were found to be eligible for the program and agreed to participate) to the participant group and others to the control group. The INS declined to release some of those assigned to the participant group to AAP supervision, but later released them on bond (the INS rejected group).

⁵¹ Only nine intensive AAP participants were without representation.

When we consider participants, as well as those who were rejected, as the full experimental group, we can minimize the effect of program selection. And, indeed, even when the INS rejected group (with its low successful completion rate) is combined with the participants, the experimental group appeared at a rate of 75%, compared to the 63% rate achieved by the control group. This again indicates that the AAP's effect was not simply that it enrolled people who were "better risks."

Table W-5: Successful Completion Rate of High-Priority Undocumented Workers: Experimental and Control Group

	N	Successful Completion Rate
Experimental Groups:		
AAP	46	87%
INS Rejected	29	55%
Summary of Experimental Groups	75	75%
Control Group	16	63%

Having a lawyer is the other variable strongly correlated with successful completion, and this fact could serve as a guide to a future supervision program staff. They could view the undocumented workers' search for representation as a sign that they are likely to attend their hearings, and direct more of their monitoring and services to those not taking steps in that direction.

Low-Priority Groups

When we conducted a multivariate analysis of the factors affecting successful completion, the only factors that had an independent correlation with successful completion were having legal representation and applying for relief. (The 15 who applied for relief appeared 87% of the time.) Participation in the AAP regular program did not have a significant effect for the low-priority group as a whole. With equivalent characteristics and in equivalent situations, undocumented workers will do as well (or poorly) on recognizance as under minimal supervision.

However, we conducted additional analyses to determine whether under certain conditions regular supervision might have an effect. We found that the program had an effect for the low-priority workers with strong family ties (both a spouse and/or child in the United States and a family member with citizen or LPR status). Individuals with these ties, regardless of participation in the AAP, were very likely to have a lawyer; three-fourths of the participants and 60% of the comparison group members did. Even so, the nonparticipants completed successfully only 40% of the time, while the AAP regular participants completed successfully 89% of the time. For low-priority

undocumented workers with strong family ties, AAP participation increased the chances that they would complete their cases successfully, over and above the effect of legal representation.

Factors That Influence Compliance with Final Court Orders

After undocumented workers' court cases have been completed and they have received a decision, some will be allowed to stay in the United States; most will have to leave. Those with voluntary departure will have to leave by a certain date (usually 60 or 120 days after the court decision) or they will be considered absconders. Below, we examine factors correlated with undocumented workers leaving the United States when they are required to do so.

Of the 134 high-priority individuals in this analysis, 90 completed successfully. Sixty-six of these were ordered to leave the United States but only about half of these (52%) actually departed. Do the same variables that had a positive effect on successful completion also have a positive effect on final compliance? For the most part, the answer is no.

The two factors that most consistently had an effect on the court appearance of high-priority undocumented workers—having legal representation and participating in the AAP—do not have a similar effect here. Those with legal representation are no more likely to comply with requirements to leave the country than those without lawyers. High-priority AAP work-site participants, although very successful at appearing at required court hearings, were not more successful than their comparison group in complying with court orders to leave the country. In fact, the comparison group, which had a significantly higher proportion of individuals who were ordered removed in absentia than AAP, had higher compliance rates for those granted voluntary departure (57% compared to 45%). The strength of a supervised release program for undocumented workers such as the AAP seems to be in assuring that participants attend all of their court hearings.

Conclusions

Undocumented workers appear at high rates only in intensive supervision and the effect of the program is most dramatic for them. They have fewer incentives to comply on their own than the other noncitizen groups and require the additional incentives provided by intensive supervision. Once in the program, the undocumented workers—including those with demographic and social-tie characteristics that put them at risk—appeared at about the same rates as the other noncitizen groups. To comply with orders to leave the country, undocumented workers need greater incentives than intensive supervision without the possibility of redetention. Including a requirement of program compliance in the voluntary departure order would strengthen a supervision program in this regard.

CHAPTER 4: WHY APPEAR AT IMMIGRATION COURT? A SURVEY OF AAP PARTICIPANTS

Introduction

In order to understand what it was about the AAP that helped participants complete proceedings at higher rates than nonparticipants, we conducted a survey. We asked people about their experiences with immigration court and the AAP, and about the decisions they made and why they made them. In forty in-depth interviews, we elicited immigrants' explanations for why they appeared. The survey was not intended to offer proof that supervision works, but to gain an understanding of what encourages people to comply and to focus attention on issues that would be important in designing similar programs. Interviews were conducted in person, when possible, or by telephone.

Our survey analysis shows that information provided by the AAP contributed to participants' evolving awareness of laws, options, and consequences of noncompliance. Additionally, the sense of belonging to a program served to ease feelings of alienation and motivate noncitizens to comply.

Related Studies

Two concepts from the existing literature offered a useful framework for understanding why noncitizens comply with immigration removal proceedings. These are the concepts of "imagined community" and weighing options. In his 1994 article, "The Power of the Imagined Community," Chavez asserts that imagining oneself part of a local community is a powerful influence on settlement among Mexican immigrants in the San Diego area.⁵² He asserts that social linkages and cultural sentiments that result in immigrants imagining themselves part of communities in the United States have more effect on noncitizens' desire to settle in and make a commitment to a U.S. home than immigration laws or even political or economic situations in their country of origin.

Applying this to the AAP experience, we think that the more noncitizens feel they are a visible, legitimate part of their adopted country and have a sense of belonging (legitimate even if not legal or documented, as opposed to invisible, underground, and fugitive), the more they are willing to buy into cooperation and compliance. At each stage of our survey results, we will examine the role "belonging" may play in compliance.

Choices to migrate as well as to return to one's home country, according to Massey and Espinosa ("What's Driving Mexico-U.S. Migration? A Theoretical, Empirical, and Policy Analysis" 1997), are based on weighing options—complex

⁵² Chavez, Leo. "The Power of Imagined Community: The Settlement of Undocumented Mexicans and Central Americans in the United States." *American Anthropology* 96, no. 1 (1994): 52-73.

decision-making processes, in which individuals constantly assess and weigh both economic and other advantages and disadvantages.⁵³

We think that the AAP affects its participants' decision-making processes because it offers information about how things work (the U.S. justice system, immigration removal proceedings, and immigration court). AAP supervision officers lay out facts and options, offer assistance in problem solving and offer services and support where needed. AAP staff members make themselves available and accessible to listen, inform, advise, and guide participants. At the same time, participants know that staff members are prepared to back up this soft approach with tough reinforcement, such as recommending redetention, if necessary. We will also examine the role that weighing options, including knowledge of consequences, played in the decision-making process at each stage.

Background Information on Intensive Participants

AAP participants came from many parts of the world. They left their countries of origin for various reasons, and the options available for them to remain in the United States are different. The AAP participants surveyed reflect this diversity. We interviewed:

- Twenty-three asylum seekers who had been apprehended at JFK airport and had been detained at the Wackenhut detention facility in Queens.
- Fifteen undocumented workers, apprehended at their places of employment, who had been detained in Elizabeth, New Jersey.
- Two criminal aliens, who had been detained at the Varick Street Service Processing Center.

Participants we interviewed spent an average of 21 nights in detention. Undocumented workers generally spent one or two nights in detention; asylum seekers and criminal alien participants spent as much as two months in detention before being released to the AAP. Forty-seven percent were in proceedings, and participating in the AAP, for less than a year; 53% were in the process for more than a year. Overall they were required to appear at an average of four hearings.

Survey Results

Survey results are presented below in stages. These stages represent different time periods in the participants' progression through removal proceedings. Stage One describes how participants experienced the AAP initially and their evolving perceptions of the program and the justice system. Stage Two deals with the participants' decision to attend their final hearing even with the threat of redetention. Finally, Stage Three goes beyond the last hearing to focus on compliance with a final court order.

⁵³ Massey, Douglas and Kristin Espinosa. "What's Driving Mexico-U.S. Migration? A Theoretical, Empirical, and Policy Analysis." *American Journal of Sociology* 102, no.4 (1997): 939-92.

Stage One—Evolving Thoughts of AAP Participants in Removal Proceedings

Apprehension and Detention

Immigration literature indicates that noncitizens are unfamiliar with U.S. laws and legal systems whether they have entered illegally without inspection or are seeking asylum. Our survey results concerning apprehension and detention confirm this point. That is, before AAP participants entered the program, they lacked understanding of what happens to noncitizens apprehended by the INS. For example, at the time of their apprehension, 40% did not understand that they would have to appear in front of an immigration judge. Many participants expected immediate expulsion and were unprepared to deal with proceedings.

Asylum seekers were particularly confused at the time of apprehension. Almost half of those interviewed did not understand that they would have to appear before a judge, compared to only about one-quarter of the undocumented workers. The asylum seekers were also more fearful, both about being returned to their countries and about having to languish indefinitely in a detention center. For newly arrived asylum seekers, almost everything about the United States is new and unfamiliar, or is based on images and impressions formed abroad from media and reports from acquaintances. Worse yet, some see through lenses colored by propaganda or smugglers' guarantees.

Noncitizens we surveyed who were apprehended in work-site enforcement actions had been living in the United States for anywhere from two to 13 years. Such individuals are likely to be integrated into local communities of fellow countrymen and an underground economy; but may be loosely connected to U.S. structures and institutions and unaware of the bigger picture. For example, the first group of AAP undocumented worker participants walked out of the INS offices at Federal Plaza in Manhattan with no idea of how to return to their homes in Long Island; they had never been to Manhattan, were unfamiliar with transportation systems, and said they felt lost.

Criminal aliens, many of whom are already lawful permanent residents, feel more settled in the United States. However, they have all had brushes with the legal system, which may have given them a sense of "belonging," but in a negative way.

In terms of their decision-making processes, at the time they entered the program, most of the AAP participants appeared to be acting impulsively and without information, knowledge of options, or the ability to plan a rational course of action. Many asylum seekers describe how they focused more on escaping difficult situations in their home countries than on planning what they would do once they arrived in the United States. Undocumented workers explained that they had been living with the thought of "if or when I get caught," but most had not yet resolved the "then what?" question. The criminal alien participants were the most incredulous and unprepared for the possibility of having to leave the country where they thought their status was secure.

Initial Impressions of the AAP

The intensive participants we interviewed lived with family members or friends, and under the direct supervision of the AAP, while they prepared their immigration court cases. Participants reported regularly by telephone and in person to supervision officers at the AAP office in Manhattan, and they were visited in their homes by field staff members.

We asked the participants we interviewed, all of whom had completed their cases, to contrast what they initially thought the AAP could do for them to what they currently saw as the purpose of AAP, and to tell us the ways in which the AAP was most helpful to them.

Overall almost three-quarters of the forty participants interviewed said they thought release from detention was the main purpose of the AAP both at the time of intake and at the time of completion. A smaller proportion (23 people—56%) thought that release from detention was the most helpful aspect of the program.

For undocumented workers and criminal alien participants alike, release loomed larger at intake than at completion; for asylum seekers release was a primary purpose of the AAP throughout. Notwithstanding these differences in degree of emphasis, in all three types of cases there was a change in the way participants described release from detention at the time of intake and at the time of completion. At the time of intake, release was an end in itself. However, at the time of completion, several participants saw release as a means to an end, expanding on why release from detention was such an important part of the program.

One participant responded that release from detention “freed bed space for the INS;” another believed that it “saved money for the government.” Other participants also noted the importance of being out of detention when trying to prepare a case for immigration court. One interviewee said that release from detention “allows you to fight your case while free.” Such comments suggest that these participants realized that they were better prepared to appear in court because they were at liberty.

Understanding the AAP in Relation to the INS

At the time they entered the program, some participants misunderstood AAP’s relationship with the INS and the underlying U.S. justice system. More than one-fourth (11 participants—28%) expressed the mistaken and unrealistic hope that the AAP would help them legalize their status through inside connections with the INS. By the time they completed the program, only two participants thought the AAP was directly involved in determining their immigration court outcomes. Furthermore, at the time of intake, two participants thought that the AAP was working covertly to help the INS at the expense of the participant. By completion, no participants thought the AAP was working for the INS to deceive or entrap them.

From the interviews, we can see an improvement in participants’ understanding of the AAP, the INS, and the larger U.S. justice system. Most understood what a program

like the AAP could do within a much more realistic cultural and legal context. One participant illustrated the point by saying: "They cannot help your case but they can give you access to the computer so people can prepare for their own cases."

Reactions to Supervision and Assistance

Supervision requirements, which were mentioned as part of the initial impression of the AAP by very few participants (four of the forty), were mentioned at the time of completion by a substantial proportion of the participants interviewed (12). Some participants described supervision as negative or overbearing, but others saw it as a positive feature of the program. Some said that they "communicated with AAP staff every week," and that they liked talking to their AAP supervision officers.

At the time of intake, few participants concentrated on the assistance aspect of the program—only 11 participants (28%) thought that the AAP would provide assistance with the court process, with finding a lawyer, or solving problems of daily living. However, at the time of completion, 28 people (70%) mentioned assistance as one of the purposes of the program and six people (15%) described the assistance they received as the main purpose of the program.

Thirty-four (85%) mentioned at least one of the following as being helpful to them: assistance with the court process, finding a lawyer, and solving problems of daily living. And 15 of these 34 called AAP's assistance in one of these areas the most helpful aspect of the program.

At the time of completion, some participants were able to elaborate on the exact kind of assistance the AAP provided. For example, one participant said that the AAP "helped with communication in English and interpreted what happened in court." Other participants noted that AAP's assistance included easing participants' fears, accompanying them to court and other immigration and government offices, providing access to a computer and an extensive resource center, as well as providing referrals to legal, social, medical and educational services.

Asylum seekers who spoke about assistance focused most on the help they received in solving problems of daily living. Ten asylum seekers mentioned that providing daily living assistance was one of the purposes of the AAP and 15 mentioned daily living assistance as a helpful aspect of the program. The assistance asylum seekers appreciated included referrals to medical services, therapists, and English classes. One asylum seeker said that the AAP staff "always asked if I was okay and if my living situation was suitable. This is psychologically helpful for participants."

Undocumented workers and criminal alien participants seemed more dependent on the AAP's help than asylum seekers throughout their time in proceedings. Nine undocumented workers (60%) defined assistance as the most helpful aspect of the program, and both criminal alien participants described the assistance they received as the most helpful aspect. Whereas asylum seekers focused on assistance they received in solving problems of daily living, undocumented worker and criminal alien participants

concentrated more on the assistance they received in finding a lawyer or negotiating the court process.

All participants we interviewed had retained legal representation by the time they completed their cases, but the AAP was much more instrumental in helping undocumented workers and criminal alien participants find legal representation. The majority (59%) of asylum seekers had lawyers before they even met with an intake screener. However, undocumented workers and criminal alien participants did not have the same access to legal representation without the help of the AAP. The AAP helped 11 of 15 undocumented workers and both criminal alien participants find their legal representation. Help ranged from giving a referral list to accompanying the participant to legal appointments.

Effects of the AAP

The availability and accessibility of staff to participants was a recurring theme in the interviews. Many participants emphasized the kindness and decent treatment they received from program staff, and it was extremely important and significant to them. What exactly were they talking about? It was not about tangible items of monetary or social worth—not gifts or invitations home for dinner. What impressed them was something much more basic—it was an attitude, a decent and caring manner, a pleasant smile, attempts to communicate no matter how difficult, and a willingness to take the time to listen and offer constructive guidance and assistance.

Participants were also asked to think of ways the AAP might better serve their needs. Sixteen participants (40%) responded that no improvement was needed. Another 20% said that the program should reach more people. Five (13%) thought that AAP should provide direct legal representation. These suggested improvements indicate that the services the AAP provided were helpful to the majority of participants interviewed and many thought that more people should benefit from this type of supervision program.

Summary of Stage One

The AAP gave these participants a sense of belonging to life in the United States in many ways, including obtaining their release from detention, showing concern for their mental and physical states, and referring them to classes and services. One undocumented worker released to the AAP and taken to AAP offices for orientation said that sitting in the AAP conference room made him feel significant and that being offered a glass of soda made him feel cared for. Supervision, though resented by some, was interpreted by others as another manifestation of concern—it was both checking up on and checking in on. The aspect that seems to have contributed most to a sense of belonging was having somewhere to go or someone to call for assistance, which was sometimes as basic as listening to a problem or explaining what something meant. Participants understood that the assistance was not just limited to areas that related directly to removal proceedings, but that it was available for any problem.

Our discussions with AAP participants suggest that this attention gave participants confidence and prepared the way to influence their decision-making process.

Shortly after the AAP obtained participants' release from detention, they were required to attend an orientation, which addressed the questions most frequently asked by people placed in removal proceedings. Participants saw that the AAP had information and resources to help them and that it was in their best interest to consider the advice, guidance, and warnings offered to them. Since staff members seemed genuinely interested in all their needs, participants were willing to listen carefully and consider the options presented to them about difficult choices they would have to make.

Stage Two—Attending a Final Hearing Even with the Threat of Redetention

The participant survey allowed us to better understand reasons why participants attended their final hearings. For the forty participants we interviewed, responses regarding why they attended their final hearings fell into four categories. They are: desire to follow the law/program regulations (50%), hope (38%), fear (5%), and resignation (5%). Twenty-five of these forty people faced redetention at their final hearing. For this subgroup the breakdown was: desire to follow the law/program regulations (64%), and hope (36%).

The asylum seekers released from Wackenhut, who expressed the greatest desire to follow the law and comply with the program (65%), also expressed the most gratitude to the AAP for obtaining their release and for helping them. More than half told us about how much they appreciated the attention they received from the staff. Interviewees talked about how the staff was available to answer their questions, to listen to their concerns, give attention to each participant and offer general help. Interviewees felt that they had someone on their side during the court process, which boosted their confidence when going to court.

Their appreciation fostered a great sense of obligation and therefore a willingness to cooperate and comply. Many formed a bond with the AAP staff and wanted to preserve the good relationship. Individual responses to the question of why they complied included the following from asylum seekers: "obligation to AAP," "I told the AAP that I would show up so I did," "Although I thought the case was not in my favor, I made an obligation to the AAP and I did not want to let them down." Furthermore, not only were they concerned about their own futures but also about preserving the program for future asylum seekers. Two people said that their performance in the program could help other detainees get released in the future.

Thirty-three percent of the undocumented workers expressed a desire to follow the law and comply with the program. Several of them expressed a desire to leave properly so that they might be able to return legally in the future. Many pointed to transnational allegiances, that is, family and homes in both their country of origin and in the United States. Their sense of belonging both places was strong, and they wanted to work within the system as much as possible. Of the ten undocumented workers interviewed who had been granted voluntary departure (VD), when asked the perceived advantages in applying for VD, five of them said they wanted to depart legally.

Information and guidance provided by the AAP contributed to participants' ability to make informed choices. They were aware of their options, and of the consequences of their actions. AAP staff members make a strong point that it is in participants' best interest to comply. This appears to have contributed, at least in part, to certain of the expressed motivations for their compliance: desire to follow the law, fear, and resignation.

It makes sense that having realistic and trusted information to consider may encourage many people to comply with proceedings rather than abscond—a combination of *knowing the right thing to do* and *wanting to do it*. Many participants told us that the AAP had given them: “very useful information,” “an orientation to the immigration system,” and “respectful help.” Participants saw AAP staff members as models of what it meant to do the right thing within a cultural context appropriate to the United States.

Summary of Stage Two

For noncitizens who come to the United States expecting it to be fair and just, relating to pleasant, fair people at the AAP served to confirm this expectation and give them more hope. It also gave them a greater sense of being a part of a community.

The AAP accepted noncitizens, whom the law had labeled as “aliens,” and allowed them to overcome feelings of alienation. Participation in the AAP means that people know you and will know whether or not you did the right thing. Furthermore, the AAP helps participants understand what “doing the right thing” means within the context of the U.S. justice system. Most noncitizens start with good intentions but they lack information, understanding, and a trusted source of information and assistance. As they build a trusting relationship with courteous, respectful Americans they become more committed to following the law. At the same time, they develop a better understanding of the U.S. justice system and legal rights, responsibilities and consequences. In this way they are better able to make informed decisions.

Stage Three—Complying with a Final Order

It is also particularly important to focus on participants who complied with a final court order and to find out why they complied. Eighteen AAP participants we interviewed were allowed to stay in the United States with relief that included cancellation of removal, adjustment, asylum, withholding of removal, and temporary protective status. Twelve were involved in appeals.

One Wackenhut and nine undocumented worker participants had been granted voluntary departure, and were required to leave the United States by departure dates that are far enough in the past for us to confirm whether or not they actually departed. For all ten people, the AAP provided information about following through with their departure orders, such as helping them make ticket arrangements, accompanying them to the INS

Detention and Deportation office to provide evidence of proper travel documents, and supplying information about how to get departure bonds cancelled.⁵⁴

Of the ten participants, seven departed from the United States on schedule, one departed a few days late, and two failed to depart.⁵⁵ One man who departed said, "I got departure assistance from the AAP, I left calmly and in compliance with the law as a good moral person." Another man, a Wackenhut participant, was planning to return to his home country for an emergency situation without attending his initial court hearing. But after his supervision officer informed him of the consequences of failing to attend a hearing (being ordered removed in absentia), he postponed his departure, attended his hearing and then departed legally.

The person who departed late had completed all of the preparations to leave on time and even had her airline ticket for departure prior to her deadline, but she failed to show up for the scheduled flight, where her AAP supervision officer was waiting. Immediately thereafter, AAP field officers visited her New York City home, spoke to her relatives, and recommended her to the INS for redetention. This was a situation that required strict reinforcement, and it worked. Within a few days after the home visit and referral to the INS, the participant called the AAP from her home country to inform supervision staff that she had returned.

Departing Legally from the United States

As noted earlier, AAP participants make complex decisions when deciding to attend their court hearings or abscond. They also make these decisions when ultimately deciding to return to their home countries. Participants who possibly faced leaving the United States were asked to tell the interviewer what they perceived to be the advantages of returning to their home countries.

All ten participants required to leave the United States (whether they actually left or not) gave similar responses concerning the advantages and disadvantages of leaving the United States. The advantages they gave included the following: looking forward to returning to their families or employment in their home countries, or not enjoying life in the United States. The disadvantages they gave included concerns about their personal safety or employment opportunities in their home countries, and anxiety about leaving family in the United States.

There was only one key term that separated the responses: all compliers, but none of the absconders, mentioned that they wanted to depart legally from the United States. Each one expressed the idea that he or she wanted to return to his or her home country without a negative record. Each wanted to make sure that he or she would be able to

⁵⁴ Details about the departure assistance provided by AAP supervision officers were taken from notes in the AAP database.

⁵⁵ Of the eight people who left the United States, five were interviewed prior to departing and three were interviewed via telephone after they had returned to their home countries.

return to the United States legally if the opportunity to do so became available in the future.

Summary of Stage Three

Some participants did not comply. They were willing to follow AAP guidance, work through the system, attend hearings, and complete court cases. After that they did not carry out the order to depart.

“Belonging” to the AAP comes to an end. And ultimately noncitizens have to make their own decisions. Losing a case in immigration court has consequences that can be all encompassing and even more challenging than those in criminal court. People may face a return to economic hardship, a dangerous political situation, or at the very least, a less promising future for themselves and their families. These realities can carry more weight than criminal penalties such as paying fines, and can have more widespread repercussions than serving short sentences.

Those who complied were focused on the possible future benefits of compliance. Their desire to maintain a legal standing in the United States related to the literature concerning transnational migrants, which discusses people belonging to two cultures. They need to keep their options open and not burn their legal bridges, that is, jeopardize the possibility of obtaining legal status in the future.

The examples of the eight participants who departed from the United States reveal some of the AAP’s role in this decision-making process on both affective and rational levels. On the affective level, the AAP helped participants understand what it means to live in the United States in good standing, in a legitimate way. Once they complete their court cases, belonging to the AAP ends; if anything carries over, it will be a memory of wanting to do things the right way. On the rational level, the AAP consistently informed participants who were required to leave of the negative legal consequences if they failed to leave the United States.

Despite their sense of belonging to the AAP, their desire to follow the law, and their understanding of the consequences of noncompliance, some participants may not comply with their final court orders. Because the consequences of losing an immigration case are so life-changing and the decision to leave the United States can be influenced by other factors that outweigh the effect of the AAP, this is the stage that calls for effective reinforcements.

Conclusions

The success of the AAP mirrors that of studies done within the criminal justice system, for example, those regarding day fines.⁵⁶ Both the AAP and the day fines research show that when people are given complete and accurate information, when their performance within a given system is monitored and if penalties for not complying are

⁵⁶ See Hillsman, Sally. “Fines and Day Fines.” In *Crime and Justice: A Review of Research*, eds. Michael Tonry and Norval Morris (Chicago: University of Chicago Press, 1990).

swift, they are very likely to complete any obligations set forth. When AAP participants violated program conditions, AAP staff alerted the INS immediately; the threat of redetention served as an effective deterrent, even though the INS rarely redetained participants. The AAP's experience suggests that INS-funded supervision and assistance services should, in the future, put a high priority on respectfully engaging with noncitizens under supervision, providing accurate and objective information about the process, and encouraging appropriate steps for compliance. There is also a need to back this up with appropriate enforcement to ensure that people who are ordered to leave the country comply.

CHAPTER 5: THE COST-EFFECTIVENESS OF SUPERVISION

Introduction

This chapter compares the cost of intensive supervision with the principal alternative strategies currently used by the INS: detaining individuals throughout their proceedings, and detaining them for an initial period of time and then releasing them on bond or parole. The analysis yields estimates of what supervised release would cost the INS per individual who attends all hearings and per individual who complies with final orders of the court.⁵⁷ The three strategies are compared with reference to the subgroups of noncitizens the AAP has supervised, arriving asylum seekers, criminal aliens, and undocumented workers.

Analysis

Two effectiveness measures—continuous appearance at immigration court hearings and compliance with final court orders—are used in this analysis because they point to two different release scenarios. The INS may decide to release noncitizens—either on bond, parole or supervision—for the entire length of their remaining proceedings, or it may release them only through the completion of their hearings and then redetain those who are ordered removed from the United States. In the latter scenario, the comparative costs per individual who appears for all required hearings would be the appropriate measure of cost-effectiveness. The subsequent costs of redetention and removal would be the same for all strategies. If, on the other hand, the INS continues its current policy of generally not providing for the redetention of those it releases, then the cost per individual who complies with a final court order is the appropriate measure.

The cost items assigned a dollar value and included in these calculations are the average daily cost of detention, the estimated daily cost of intensive supervision, and the average amounts the INS recovers from breached bonds. In estimating relative costs, we will include only those to the INS and exclude consideration of costs to other levels and agencies of government, the taxpayers and the individuals in proceedings.⁵⁸ Furthermore, we can include only INS costs to which a dollar value can be assigned. For example, we cannot assign a monetary value to the damage caused to the INS and system credibility when large proportions of aliens in removal proceedings abscond.

⁵⁷ The literature on cost analysis distinguishes between cost-effectiveness and cost-benefit analysis. We have used the cost-effectiveness approach because the benefit that the INS strategies are designed to achieve—compliance with legal requirements—is difficult to quantify in monetary terms. Rather than assign a dollar value to costs and benefits and arrive at a net figure for alternative strategies, cost-effectiveness analysis compares strategies on the basis of their costs and a quantified effectiveness measure.

⁵⁸ There is no consensus in the research on the net cost of illegal immigration to the government and taxpayer. See, for example, The Urban Institute, *Fiscal Impacts of Undocumented Aliens: Selected Estimates For Seven States*, 1994.

Data on the two effectiveness measures are drawn from the impact evaluation of the AAP, which includes a comparison of the appearance and compliance rates of program participants and comparison groups released on bond or parole (see Chapter 2).

The cost estimates included in this section of the report were calculated using the following formulas:

$$a) C_{\text{hear}} = \frac{D_{\text{init}} + S_{\text{sup}} + D_{\text{add}} - B_{\text{breach}}}{E_{\text{hear}}}$$

$$b) C_{\text{comp}} = \frac{D_{\text{init}} + S_{\text{sup}} + D_{\text{add}} - B_{\text{breach}}}{E_{\text{comp}}}$$

In these formulas, C_{hear} is the estimated INS cost through the final hearing per individual who appears for all required hearings. C_{comp} is the cost per individual who appears for all required hearings *and* complies with his or her final order. D_{init} is the estimated initial detention cost (prior to release, if release occurs, or throughout proceedings, if release does not occur) and D_{add} is the additional detention cost for those who require redetention after having been released. S_{sup} is the estimated cost of supervision, which only applies to the supervised release strategy. B_{breach} is the amount earned by the INS through breached bonds. For each calculation, the total costs incurred by the INS are divided by an effectiveness measure: in formula A, that measure is E_{hear} which is the continuous appearance rate for that subgroup; and in formula B that measure is E_{comp} which is the final compliance rate.

The INS provided the average daily cost of detention (\$61). We used the AAP's experience to estimate what it would cost the INS to implement supervision on a nationwide basis. The daily cost of supervision—which we estimate to be \$12 per day—is based on a series of budget projections for supervision centers of varying scales. The cost categories included in these budgets include labor, rent/utilities, technology, vehicles and other equipment, and interpreter services. For example, given the AAP's experience, we estimate a staff to participant ratio of 23 to 1 for a supervision center with an annual caseload of 250 intensive participants. We also estimate that supervision staff would spend an average total of three and a half hours per participant on a monthly basis. We discuss the methods used to estimate costs, including a detailed hypothetical budget, which was used to estimate the daily cost of supervised release in Methods Appendix V.

This cost-effectiveness analysis allows us to consider the cost implications of current INS strategies and of the options for change that are available as the INS seeks to allocate its scarce resources to advance its policy goals. In doing so, we considered the following questions:

1. What are the estimated INS costs for each of the three custody strategies: detention, detention followed by release on parole or bond, and supervision?

- The cost the INS incurs detaining undocumented workers is comparatively low because, on average, they spend a very short amount of time in detention before they are voluntarily returned to their home country. On the other hand, the cost of supervising this population is significantly higher because the proceedings of released individuals tend to last much longer (an average of 288 days) for a similar result—voluntary departure. We therefore considered what it would cost the INS to develop an expedited supervision strategy for undocumented noncitizens who are not eligible to apply for relief. What would the benefits of such a model be?

The following tables summarize the results of our comparison of the three INS strategies. These include the estimates of the cost per individual who appears for all required hearings (Table 1) as well as the cost per individual who complies with his or her final order (Table 2). For individuals detained throughout their proceedings, we assumed a 100% continuous appearance and compliance rate. For the remaining two strategies, the total costs incurred by the INS were divided by the compliance measure achieved by that strategy as reported in our analysis of participants and comparison groups (see Chapter 2).

Supervision is a more cost-effective strategy than detention for asylum seekers and criminal aliens. It is less cost-effective than detention for undocumented workers, if the INS is willing to use scarce detention space for this population. Comparing supervision to the other alternative, it is more cost-effective than parole for asylum seekers. Conclusions about supervision and release on bond for criminal aliens and undocumented workers depend on the trade-off the INS is willing to make between costs and compliance rates.

Table 1: Cost-Effectiveness Through Final Hearing

Custody Strategy	Asylum Seekers		Criminal Aliens		Undocumented Workers	
	Continuous Appearance Rate	Cost Per Individual Who Appears	Continuous Appearance Rate	Cost Per Individual Who Appears	Continuous Appearance Rate	Cost Per Individual Who Appears
Detained throughout proceedings	100%	\$7,259	100%	\$4,575	100%	\$1,098
Detained and later paroled or bonded out	78%	\$4,223	77%	\$238	59%	\$931
Detained and later supervised	93%	\$3,310	94%	\$3,871	88%	\$3,809

N= Asylum seekers: 83 supervision participants, 214 comparison group members;
 Criminal aliens: 16 supervision participants, 93 comparison group members;
 Undocumented workers: 54 supervision participants, 94 comparison group members.

Table 2: Cost-Effectiveness Through Final Order

Custody Strategy	Asylum Seekers		Criminal Aliens		Undocumented Workers	
	Compliance Rate	Cost Per Individual Who Complies	Compliance Rate	Cost Per Individual Who Complies	Compliance Rate	Cost Per Individual Who Complies
Detained throughout proceedings	100%	\$7,259	100%	\$4,575	100%	\$1,098
Detained and later paroled or bonded out	73%	\$4,512	34%	(\$3,192)	26%	\$498
Detained and later supervised	82%	\$3,755	100%	\$3,639	53%	\$6,325

N= Asylum seekers: 34 supervision participants, 146 comparison group members;
 Criminal aliens: 7 supervision participants, 47 comparison group members;
 Undocumented workers: 43 supervision participants, 86 comparison group members.

Asylum Seekers

In comparing the cost implications of detaining, paroling, or supervising asylum seekers, we found that supervision results in a lower cost per compliant individual than both alternative strategies. The average cost per arriving asylum seeker who is supervised and attends all required hearings is \$3,310; the cost through final compliance is \$3,755. In comparison, the average cost to detain an asylum seeker throughout proceedings is \$7,259.⁵⁹ Furthermore, while release on parole yields relatively high degrees of compliance, the rates achieved with supervision are higher, and the differences for appearance are significant.⁶⁰

Criminal Aliens

For criminal aliens, as for asylum seekers, detention throughout proceedings is the most costly of the three alternatives in securing attendance through the final hearing and compliance with the final order. On average, the INS spends \$4,575 to detain each compliant individual. The INS incurs the least costs by releasing criminal aliens on bond. In fact, the INS eventually earns revenue with this strategy by breaching the bonds for those criminal aliens who abscond. Supervision produces some savings for the INS in comparison to detention—about \$700 for every individual who appears for all required hearings (see Table 2).

The cost of supervision could be reduced if changes were made in the time spent in proceedings. Removal proceedings for criminal aliens in supervision lasted an average

⁵⁹ As indicated in previous chapters of the report, most of the asylum seekers and criminal aliens who were ordered removed while present in court—whether they were released to supervision, parole, or bond—were, by March 31, 2000, still either awaiting a notice to surrender or appealing the removal orders. They are not included in the analysis of compliance with final orders.

⁶⁰ The difference is significant at the .01 level.

of 260 days as compared to 75 days for those who were detained throughout their proceedings. If the hearing process moved faster for those released than it currently does, the cost disparity between detention and supervision would be greater than it is, based on the current speed of the nondetained docket.

The INS does not incur many costs in connection with those criminal aliens who bond out because they spend a very short amount of time in detention and there are very few expenses associated with them after they are released. The strategy yields a relatively high appearance rate although it is lower than the rate achieved in supervision, but a very low compliance rate of 34%.

Undocumented Workers

It is difficult to compare costs for those apprehended in work-site enforcement actions because this population is not a high detention priority for the INS. Typically, noncitizens apprehended in work-site actions are either released on recognizance or have very low bonds set. Those who are detained for the entire length of their proceedings are usually repatriated (through voluntarily return or orders of removal) shortly after they are apprehended. As a result, the INS does not incur significant costs detaining this population. We estimate that the INS spends \$1,098 per compliant undocumented worker who is never released from detention. Typically, undocumented workers are not eligible for any form of relief other than voluntary departure. This is why the length of detained proceedings tends to be comparatively brief—18 days, on average.

Releasing undocumented workers on bond results in very low appearance and compliance rates and only a small degree of cost savings in comparison to detention throughout proceedings. On average, only 26 % of those undocumented workers who are released from detention on bond eventually comply with their final order.

Supervision is much more expensive than bond, but it results in significantly higher appearance and compliance rates. We estimate a cost of \$6,325 per supervised undocumented worker who complies with all legal obligations. The wide cost disparity between supervising and detaining this population reflects the length of time that released undocumented workers spend in proceedings. The undocumented workers released to supervision or on bond spent an average of 288 days in proceedings—compared to the 18 days for those who were detained—despite the fact that they generally have no legal recourse other than voluntary departure. The AAP has found that immigration judges are very reluctant to proceed with hearings when a noncitizen is not represented by an attorney—even in cases when the individual is an undocumented worker who is ineligible to apply for any relief from removal. This often results in a series of adjournments to allow the noncitizen to seek representation.⁶¹

To the extent that the INS has the available detention resources, the most cost-effective method for securing the compliance of undocumented workers would be to

⁶¹ The Vera Institute of Justice. 1999. *Legal Counsel in Immigration Removal Proceedings in New York City*.

detain them for the length of their proceedings. If the INS maintains its current position—that it would prefer to reserve detention resources for other noncitizen groups—there is a justification for supervising undocumented workers. This strategy yields significantly higher appearance and compliance rates than the release on bond strategy. If the INS were to choose this course, we recommend that it find ways to expedite removal proceedings for released noncitizens who are eligible only for voluntary departure.

Such expedition could be achieved, if the INS, in collaboration with EOIR, were to schedule immigration court sessions for undocumented aliens who are solely eligible for voluntary departure only on certain days. During these sessions, an immigration lawyer could interview the respondents to determine if they were eligible to apply for any other relief. For those who are not eligible, the immigration lawyer could apply for voluntary departure on their behalf.⁶²

These sessions could be scheduled on a monthly basis or more frequently if volume permits. All undocumented workers apprehended in work-site enforcement actions could be required to appear at one of these sessions within 30 days of their arrest. Furthermore, the immigration judge could require that they voluntarily depart the United States within 30 days of that hearing. If the INS were to implement this strategy, these undocumented workers would require a maximum of 60 days of supervision. Assuming that they complied at the same rates as the undocumented workers supervised by the AAP, the cost per undocumented worker who complies with his or her final order would be \$1,796. This strategy would reduce the cost of supervising this population by \$4,529 per compliant individual. Although this expedited supervision would still cost \$698 more per removal than detention, it has the benefit of freeing up detention space for higher-priority groups (such as noncitizens ineligible for supervision and those who have been ordered to leave the country).

Conclusions

Assuming the INS goal is to minimize its costs to the degree compatible with securing compliance with the law, supervised release is a better strategy than detention, parole, or bond for asylum seekers and criminal aliens. It is also a better strategy than bond for undocumented workers. The INS could improve the cost-effectiveness of supervision, as compared to detention, for undocumented workers by creating an expedited court process for those eligible only for voluntary departure.

⁶² Respondents who requested time to think over the advice that their only legal option was voluntary departure could have their cases adjourned once—to the next “voluntary departure day.”

CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

Supervised Release

In considering the implications of the research, we return to the question with which we began the report. How can the INS most effectively assure compliance with the law and, at the same time, treat noncitizens in a just and humane manner? The research suggests that the answer is for the INS to release to alternatives (such as community supervision) as many people as it can, as quickly as it can, while they complete their immigration court hearings. The alternatives would include not only community supervision, at varying levels of intensity, but also the existing INS alternatives of bond, parole, and recognizance. Once individuals have completed their hearings, the INS would reassign those required to leave the country to the more rigorous alternatives—either detention or intensive supervision. In this way, detention would be reserved for those who cannot be released and, along with the most intense supervision, for people who are at the stage of the removal process when they are most likely to abscond.

The research shows that all noncitizen groups the INS released from detention to the intensive supervision program attended their hearings at rates close to or above 90%. It also shows that certain groups who were released on recognizance by the INS achieved equivalent rates with the more minimal level of supervision, in particular, criminal aliens with LPR status who were apprehended at JFK airport as they tried to reenter the country. In addition, asylum seekers who were released from detention to intensive supervision may need only the minimal level, at least until they complete their hearings.

Supervision has many advantages over bond, parole, and recognizance. It not only produces higher appearance rates than these other methods of release, it also produces them for people in a greater variety of circumstances and with a greater variety of incentives to comply. People with fewer incentives to comply—little chance of winning their cases or less established lives in the United States—did about as well in intensive supervision as those with much greater incentives. People with varying incentives, however, did not appear at equivalent rates when released on bond or recognizance. Even minimal supervision can add incentives to comply, and make up for other influences that motivate people to abscond.

Supervision also gives the INS a greater capacity to manage its caseload, both through the hearing process and afterward. With better case management, INS reports on appearance and compliance rates would more accurately reflect the agency's actual achievements. We found, for example, that the INS underreports noncitizens' departures from the United States and, in conversations with Vera planners at the beginning of the project, underestimated actual appearance rates. More case management capacity would also permit the INS to complete cases more efficiently by, for example, issuing notices to surrender to those ordered removed in a more timely fashion.

Although supervision has advantages, parole and bond are established INS alternatives and in some circumstances they also promote high rates of appearance. In more limited circumstances, this is also true for release on recognizance. The asylum seekers and criminal aliens the INS released from detention to parole or bond actually appeared at fairly high rates—over 75 %—and if the INS had screened the asylum seekers on additional criteria before paroling them, they would have done as well on parole as they did under supervision. The criminal aliens released on recognizance without supervision also appeared at a relatively high rate.

All of this indicates that during the period of the demonstration, the INS released, or did not detain, people who were good risks. They did this on their own, as well as on the AAP's recommendation. The great majority of these people were willing to appear for their hearings. They did not have to be detained; some did not even have to be supervised. In addition, over half of the asylum seekers, and over half of the criminal aliens released on recognizance, eventually received court orders allowing them to remain in the United States. Detaining all of these people—those who won their cases and those who appeared for their hearings and then lost their cases—would not have been necessary or fair. Detention would have increased INS costs and exacerbated the ordeal of removal proceedings for the noncitizens.

We do not know whether there were other people in detention during the time of the demonstration who could also have been released as good risks. But there are certainly people now being kept in detention who, on the evidence of this research, would attend their hearings, and often win their cases, if they were released. Virtually all of the criminal aliens in this study, who achieved these appearance rates and decisions, would now be subject to mandatory detention, a statutory policy the INS has sought to change. Also, since the AAP has ended and the overwhelming majority of the asylum seekers detained in the New York district are detained throughout their proceedings, most of the asylum seekers in this study would now be kept in detention.

The research results suggest caution, however, about trying to use community supervision to enforce orders to leave the country. The results are not conclusive on this aspect of the program, and they are only partially encouraging. The results concerning voluntary departure orders are not conclusive because AAP staff learned, too late in the demonstration to affect compliance rates, that the INS could ask the immigration court judge to attach a condition to such orders, requiring that people comply with a supervision program's rules or face redetention. A future supervision program could make use of this option to increase compliance with voluntary departure. For those ordered removed, as well as for the small proportion of participants who seriously violate program rules, the INS needs the capacity to redetain people. Those ordered removed and redetained at the time they receive the order could, depending on their risk factors, be re-released on appeal to the most intensive levels of supervision, subject to detention again if they violate program rules.

Recommendations

In light of the research and the experience of AAP staff, we offer some recommendations for next steps. We recommend that the INS implement supervised release programs in several districts as preparation for a nationwide supervision program. There are significant benefits to maintaining a nationwide program. Procedures could be worked out, for example, so that no matter where people were screened, they could be released to supervision in any part of the country where they have sufficient community ties. In addition, some functions—such as developing and distributing basic information—could be centralized, creating economies of scale.

Before a national program could be implemented, however, the INS needs to build support for supervised release and to learn more about its effects and administration. The INS needs to build support for supervised release in its Field Operations branch—on the national, and most particularly on the local, levels. In selecting the districts for a next generation of supervision programs, the most important requirement is that the district leadership understands the value of supervision and exhibits an openness to doing business in new ways. The INS could provide appropriate incentives to those making the release decisions, both rewarding them for wide use of this alternative to detention and protecting them if appropriately-made release decisions lead to bad results.

In addition, there is more for the INS to learn about the effectiveness of varying levels of supervision for different groups of noncitizens in different locations. The AAP's experience is with noncitizens in New York. The other districts selected should have a sufficient number of noncitizens resident in the area who are likely to be participants. Unless the target population remains within the geographic area covered by the program during the course of proceedings, there will be no way to supervise them.

There is more to learn also about the ways a supervised release program could maximize rates of compliance with orders to leave the country. The AAP provides evidence that noncitizens will attend their hearings even when they realize they will be redetained if they lose their cases. The AAP was not able, however, to test the effectiveness of redetaining people who violate program rules while they are under supervision, or of making supervision, and the potential for redetention, a condition of voluntary departure.

The INS should also test different ways of administering a next generation of supervision programs, that is, administration by INS staff or by a private vendor. Comparative testing among entities—to determine which could more effectively run a supervision agency—was the course Congress chose when it created the first federal pretrial service agencies.⁶³ Based upon a great deal of consideration, discussions at AAP Advisory Board meetings, and conversations with INS officials (who have not been of a single view on this point), it is fair to say that there are advantages to both options.

⁶³ *The Speedy Trial Act of 1974*, 18 USC §152 (et seq.).

Looking first at advantages of having a private entity run the supervision program, the AAP demonstration has shown that such a program works in part because participants trust their supervision officers. At many different stages of the process, the supervision relationship requires that participants provide frank answers to questions about their plans and activities. Supervision participants are likely to respond honestly only if they feel that the information they provide will be kept confidential. AAP staff members were able to create this relationship of trust through various means, including assuring a participant that "we are not Immigration, we just work in partnership with the INS." If, however, participants knew that their supervisors were INS employees, they might be reluctant to talk honestly with them, particularly because the INS could not give participants any assurances of confidentiality. This would jeopardize the supervision staff's ability to collect accurate information about participants' whereabouts and future plans.

In addition to trust and confidentiality, the services the AAP provided its participants were critical to the positive results realized by the program, as the participant survey demonstrated. Providing information, helping participants deal with their fears, and referring them to needed services were as important to program success as the strict monitoring of participants' whereabouts and the threat of redetention. This raises two issues about INS involvement. Could the same agency that arrested and was prosecuting the noncitizens also provide them with the assistance and guidance that make for an effective program? Also, one of the important services the AAP provided was referrals to lawyers. But prosecutorial referrals to defense lawyers raise a myriad of legal and ethical issues.

On the other hand, there are several advantages to having the INS manage supervision internally. Under present conditions, the INS, not the immigration judge, makes the initial determination (and sometimes the sole determination) as to whether a noncitizen should be detained or released. If an independent actor has the responsibility for screening prospective supervision clients, recommendations for release would have to be forwarded to the INS for approval. This creates an administrative inefficiency that would not exist if the INS were both conducting the screening evaluation and making the release decision.

Furthermore, the redetention process would also be more efficiently organized if the INS were managing the supervision function. Under the private contractor model, the supervision agency would have to submit a recommendation to the INS for the redetention of a participant. Either some method would have to be found to give law enforcement authority to the supervision staff, or the INS would be responsible for apprehending the absconder. If the supervision officers were INS employees, however, they would already have the necessary authority to apprehend a violator.

Both models have their benefits. Pursuing the next generation of supervised release programs would enable the INS to compare these two models and select the one that provided the greater benefit to the agency. If a decision were made to pursue one

model only, however, we would, on balance, favor having a supervision program run by a nongovernmental entity.

If the INS added a supervision program to its other nondetention alternatives, it would have greater flexibility in deciding not to detain people or to release them from detention quickly. Noncitizens with fewer incentives to comply, either during the hearing process or after they have been directed to leave the country, could be assigned to intensive levels of supervision. This approach would capitalize on any incentives people already have to comply, and add new ones. People with greater incentives to comply could be released on other terms, at least until they completed their hearings. The advantage to minimal supervision rather than parole, bond, or recognizance is that it would give the INS greater capacity to track the noncitizens' progress through hearings and to increase monitoring if and when they seem likely to abscond. The point, however, is that the addition of supervision would enable the INS to make more rational use of all its alternatives—including detention and the various forms of release. This would not only be more cost-effective for the INS, it would go far toward assuring a just system—one in which every noncitizen in removal proceedings is given the degree of freedom that is commensurate with the maintenance of public safety and the rule of law.