

**THE APPEARANCE ASSISTANCE PROGRAM:
AN ALTERNATIVE TO DETENTION FOR NONCITIZENS
IN U.S. IMMIGRATION REMOVAL PROCEEDINGS**

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I. Introduction

Since the mid-1990's, the Clinton Administration and Congress have made significant efforts to toughen immigration enforcement in the United States. Since 1993, the budget of the Immigration and Naturalization Service (INS) has more than tripled to US\$4.3 billion. The INS, with 31,000 employees, is now the largest federal law enforcement agency in the United States. Aided by draconian new laws passed in 1996—certain provisions of which even some of the laws' strongest supporters now admit went too far—removals of noncitizens from the country have more than quadrupled, from 42,452 in 1993 to 178,168 in 1999.

Not surprisingly, considering this tremendous growth in enforcement, detention of those subject to removal has also increased at a rapid pace. In 1995 the INS maintained an average detained population of 6,000. Five years later, that figure has more than tripled to 18,500. Many INS enforcement personnel and some in Congress believe that the only way to obtain compliance with the law is to detain everyone charged with an immigration violation from beginning to end of their legal proceedings. That belief has led some policymakers to argue for such universal detention, notwithstanding the enormous human and financial costs.

The Appearance Assistance Program (AAP) involves a very different way to obtain compliance with immigration proceedings—using proven selection criteria and supervision techniques to obtain voluntary compliance so long as the risk of flight does not become too great. The idea for the AAP came from the INS, which asked the Vera Institute of Justice, to design an alternative to detention program for noncitizens in deportation proceedings. Vera, a not-for-profit organization dedicated since 1961 to helping government effectuate change, agreed to do so.

In 1996 the INS contracted with Vera to run a three-year demonstration program in New York testing the alternative-to-detention strategy it had proposed. The AAP's operations began on February 3, 1997 and concluded March 31, 2000. Vera is currently preparing a comprehensive report evaluating the impact and the cost-effectiveness of the demonstration. The report will be submitted to the INS in late July.

II. The AAP Strategy

Traditionally, the INS had detained as many noncitizens as it possibly could immediately after their arrests, but then has released most of them—often, but not always, after they have posted a monetary bond—anywhere from days to months after their apprehension. People are released because there simply is not room to detain everyone. Even now, with funding for 18,500 INS detention beds, there are more than 100,000 cases pending before the immigration court at any given time. And the increased enforcement resources at the INS's disposal suggests that the number of apprehensions will continue, as they have in the past, to increase faster than the increase in detention beds.

The traditional INS approach wastes scarce detention space and causes unnecessary hardship to many immigrants. It wastes detention space because it leads the INS to make its detention decisions at the start of each case. Detention space consequently is used inefficiently in several ways.

First, many of those arrested for immigration violations are released rather routinely, but only after anywhere from a few days to a few months—often when their bed is needed for a “higher priority” case. The detention space used from the time of apprehension to the time of release does not result in any removals and is, therefore, wasted. Second, those who are released—either after never having been detained, or after some period of detention—are never re-detained, even if they lose their case. Instead, they wait, at liberty, for a letter instructing them to report for deportation. Because so few people comply with those letters, they are known colloquially within the INS as “run letters.” Third, there is a group of people detained from apprehension until their cases are decided, but who then win their cases. Their detention has wasted space throughout the proceedings and has caused hardship to people who, it turns out, were entitled to reside in the country. Moreover, many people have legitimate claims, but because of their continued detention, they are unable to acquire the documentary evidence and legal assistance that would allow them to prevail in court.

The AAP has used an alternate approach. That approach begins with the observation that people's willingness to attend hearings and comply with terms of community supervision changes over time. At the start of a case, many immigrants hope to win. This hope, even if slight, can make them good candidates for supervised release, as they have an incentive to appear at their hearings. If they win their cases, or if they agree to voluntary departure, they may never need to be re-detained. But if they lose their cases, their hope is extinguished, and they should be detained to await deportation. In other words, the alternate approach is to maximize release and community supervision at the beginning of a person's case and maximize detention at the moment that the person loses his or her claim. Under the alternate approach, those with legitimate claims will have greater opportunity to prepare and will never spend time in detention. At the same time, more of those who lose will be removed.

III. The Appearance Assistance Program

The Program

The AAP tested two levels of supervision—intensive and regular. The intensive track, designed for those the INS would otherwise have detained (and thus what is normally considered an alternative to detention), is similar to the supervision provided in U.S. criminal cases by pretrial service agencies.

AAP staff screened candidates for intensive supervision in INS facilities shortly after they had been taken into custody. Participation in the program was voluntary. Either the noncitizen or his lawyer (if one were involved at that stage) could decline involvement. To qualify for the program, individuals had to satisfy criteria relating to the absence of a threat to public safety, the strength of their community ties, and their satisfactory compliance with prior reporting requirements. Because the demonstration operated only in New York, prospective participants had to have a place to live in the New York metropolitan area. Verification of candidates' community ties and a community sponsor, known as a guarantor, were also required. When a detained noncitizen met the criteria, the AAP would recommend release from custody, without bond, conditioned upon complying with the program's requirements. The INS had discretion to approve or deny the recommendation.

For those admitted to the program, intensive supervision involved mandatory personal and telephonic reporting, home visits (sometimes at prearranged times, sometimes not), and consistent monitoring of participants' whereabouts and the progress of their cases. Supervision officers regularly asked participants how, where and with whom they spent their time. If participants were working (even without legal authorization), they were required to provide that information to the program. Violation of supervision requirements could result in recommendations for re-detention, and participants ordered removed by the immigration court were taken into custody as they left the courtroom. For those granted voluntary departure (usually within 120 days), supervision staff provided help in departure planning and monitored the participants' progress in making the necessary arrangements to return to their countries of origin.

The regular supervision track, on the other hand, was very different, with far fewer obligations. Regular supervision was for noncitizens the INS had decided not to detain. The only criteria for admission were a willingness to attend an orientation session, a verified address, and a stated commitment to comply with the requirements of the law. Regular participants were reminded by telephone and letter of their court dates and their legal obligations. Any further involvement with the program was strictly voluntary, and there were no sanctions for discontinuing participation.

To complement and increase the effectiveness of the compliance aspects of the program, the AAP also provided both intensive and regular participants with information and assistance, as a positive inducement to comply with their legal obligations. Supervision staff were regularly accessible by telephone so they often became the first persons called by participants who were uncertain or afraid about what they should do or what was going to happen to them. While supervision staff could not answer all the questions asked, particularly because they were careful not to give legal advice, they did provide a great deal of information about the immigration court process and the participants' legal obligations. Fears were allayed, if not always resolved.

Supervision staff also provided participants with referrals for needed services. Referrals to low-cost and free lawyers were the most frequent need, but staff also identified a wide range of educational and social services that helped participants to solve problems that could have decreased their likelihood of appearing in immigration court. The assistance provided—and the fact that participants perceived that AAP staff treated them with respect—increased the desire of participants to reciprocate by doing what the program asked them to do: *i.e.*, to comply with the law.

The Participants

The 534 AAP participants—165 in intensive supervision, 389 in regular—fell principally into three distinct groups, each of which was quite different in their social characteristics, in their legal situations, and in the challenges they posed for supervision staff.

The first of the three groups were 107 newly-arrived asylum seekers—83 in intensive supervision and 24 in regular. With the exception of four individuals who entered the program in its first two months, all of the intensive asylum seekers were apprehended at John F. Kennedy Airport and detained at a nearby Wackenhut facility, following the implementation of the new “expedited removal” law that required that they be held in detention at least until they had established that they had a “credible fear of persecution.”

The AAP did not obtain approval from the INS to work with these “expedited removal” asylum seekers until August, 1998, after half of the demonstration had been completed. Screening of the detained asylum seekers showed that approximately half were suitable candidates for a supervised release program.¹ One half of that group, however, had just been passing through the New York airport on their way to another part of the United States when they were apprehended and were ineligible for the AAP because their U.S. family ties were outside of the New York area. The regular asylum seekers were released by the INS on humanitarian grounds—such as being adults traveling with small children, pregnant women or people with medical problems—after having been arrested at JFK Airport. Most of the asylum seekers were from Africa, Asia and the Balkans. Virtually none of them had ever been in the United States before, and most had little experience outside their home countries. By definition, all in this group were eligible for a legal remedy which, if established, would give them the right to obtain legal status in the U.S.

The second principal group was 127 people subject to removal based upon their criminal convictions—a group commonly referred to as “criminal aliens.” Of the 16 intensive and 111 regular participants in this group, all but six were lawful permanent residents. Many had resided in the United States for decades and most had United States citizen relatives. The intensive criminal aliens were screened by the AAP at the INS’s Varick Street detention facility in Manhattan where they had been transferred following their release from local penal institutions. The regular participants with convictions were all apprehended at JFK Airport returning to the United States from trips

¹ Approximately one quarter of the entire detained asylum group were found to be ineligible for the AAP because they were arrested while changing planes on their way to Canada. The program did not accept them because, if released, most would have gone to Canada without completing their U.S. removal proceedings.

abroad. Based upon the low level and/or the age of their offenses, INS inspectors exercised their discretion to release them after they had been charged.

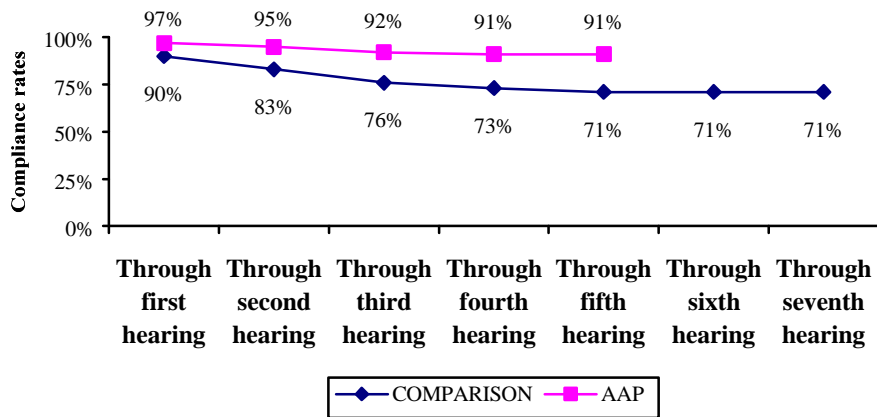
Many of the criminal aliens admitted into the program were eligible for legal relief on their cases, based upon the low level of their convictions and/or the equities of their situations, including long legal residence in the country. All of the criminal alien participants came into the AAP before October 9, 1998, when the 1996 change in the law requiring mandatory detention of virtually all criminal aliens became fully effective. It is notable that every one of these 127 participants would have been required by law to be detained from beginning to end of their proceedings, had they been apprehended after October 8, 1998.

The third principal group was 216 undocumented individuals—66 in the intensive program and 150 in the regular—who were arrested at their workplaces. There was little difference between those the INS chose to detain (who became intensive participants) and those they chose to release (who became regular participants). Often the decision was dictated by whether detention bedspace was available. Most of the work-site participants were from Mexico and Ecuador, with most of the balance from Central America. Virtually all had entered the United States without inspection—meaning they had sneaked over the Mexican border—and virtually none was eligible for any legal relief. Unlike the asylum seekers and many of the criminal aliens, almost all were eligible for voluntary departure. Arresting people at work sites was a significant INS priority in New York in 1997 and early 1998, and then enforcement activity faded away—in part, because of the strong economy.

The Results

AAP intensive participants appeared in immigration court at significantly higher rates than the comparison groups, comprised of aliens who were either paroled or released on bond. The intensive participants achieved the improved appearance rates even though they were repeatedly reminded that they would face detention in court if they lost their cases. As of March 31, 2000, the end of program operations, 91 percent of AAP intensive participants had appeared for all of their required hearings, compared to 71 percent for the comparison groups that faced no risk of re-detention (see Figure 1). The differences are statistically significant, meaning that it is 99 percent certain that the 20-percentage-point spread between the AAP and the comparison groups is not due to chance.

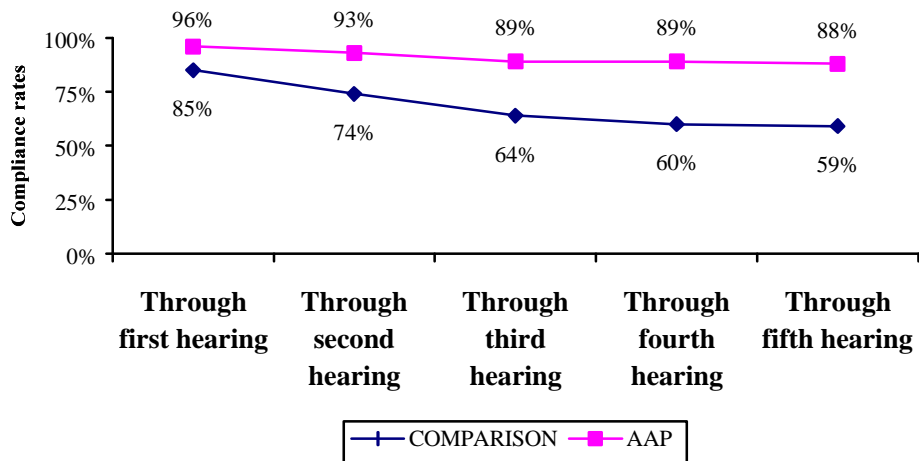
Figure 1
**Continuous Appearance at Hearings by 3/31/00
Intensive AAP and Comparison Groups**



N=153 AAP participants; 401 comparison group members

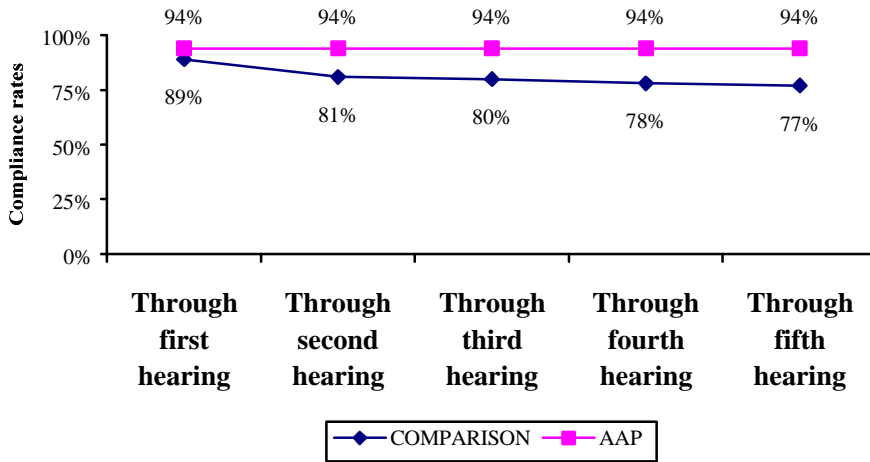
Each of the AAP participant groups demonstrated a high rate of compliance with hearing requirements. Through the end of the program, the rates of appearance were 93 percent for asylum seekers, 94 percent for criminal aliens, and 88 percent for the work-site group. These rates were higher than those achieved by the comparison groups (see Figures 2, 3, and 4).

Figure 2
**Continuous Appearance at Hearings by 3/31/00
 Intensive AAP and Comparison Groups: Work-site**



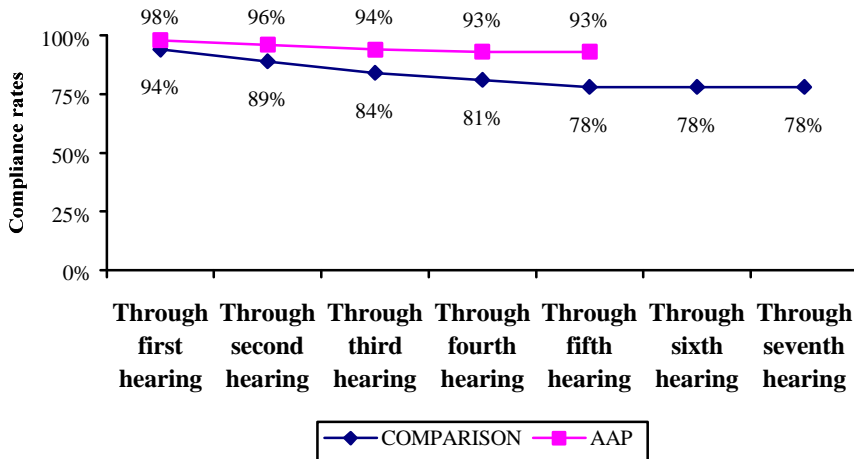
N=54 AAP participants; 94 comparison group members

Figure 3
Continuous Appearance at Hearings by 3/31/00
Intensive AAP and Comparison Groups: Criminal Aliens



N=16 AAP participants; 93 comparison group members

Figure 4
Continuous Appearance at Hearings by 3/31/00
Intensive AAP and Comparison Groups: Asylum Seekers



N=83 AAP participants; 214 comparison group members

Only two of the 165 intensive participants failed to appear at their merits hearing—where they faced re-detention if they were ordered removed. These results disprove the conventional wisdom that noncitizens will not appear for court hearings if they know that they risk going back into detention. As Vera has documented in after-the-fact interviews with participants, the hope for relief, coupled with the knowledge that a failure to appear inevitably results in an order of removal, outweighs the fear of being re-detained.

The AAP has both increased the compliance of its participants as compared to the comparison groups and also the rate at which it confirms compliance as compared to

that shown by INS data—a chronic INS problem that has persistently made the absconder rate appear higher than it is. Individuals are considered to be in compliance if they either were allowed to stay in the United States or were ordered to leave and actually departed when required to do so. The AAP confirmed and documented departures from the United States using a variety of verification methods, including in-person observations in cases where participants departed on international flights.

Sixty-nine percent of intensive participants who have reached the conclusion of all of their legal proceedings have been confirmed by the AAP to have fully complied with the outcome of their cases as compared to the 38 percent of the comparison groups who have been confirmed by INS data to be in compliance.² An AAP participant was thus 1.8 times as likely to have a confirmed compliance as was a similarly situated comparison group member.

Asylum seekers have complied at a particularly high rate. Eighty-six percent (44 of 51) of the intensive and regular asylum-seeker participants have complied with the final outcome of their cases. This high rate of compliance results in significant part from the fact that half the cases end in outcomes that permit the asylum seeker to remain in the United States.

Noncitizens with criminal convictions under AAP supervision likewise have complied at a very high rate. Of the 62 intensive and regular participants that have reached the point of compliance, 82 percent (51) have complied with all their legal obligations.

Vera is also analyzing the cost effectiveness of AAP intensive supervision as compared to the cost of detaining people throughout their proceedings. The analysis takes into account the considerably longer period of supervision, as compared to detention (since non-detained cases conclude more slowly than detained ones), and also the inevitable, albeit small, incidence of people absconding. We project that highly intensive supervision would cost about US\$12 per day, as opposed to the average daily cost of detention currently paid by the INS of US\$61. Preliminary results of the cost effectiveness analysis show dramatic savings for asylum seekers and appreciable savings for those with criminal convictions.

IV. Conclusions

- Properly designed and run alternatives to detention for noncitizens in removal proceedings achieve their goals. They are not only smart public policy, but fiscally prudent and humane.
- Community supervision, coupled with appropriate screening, results in very high appearance rates and in much higher compliance rates than unsupervised release, either with or without bond.
- The time to release people charged with immigration violations who are not public safety risks or likely to abscond is as soon as possible after apprehension. Every day of unnecessary delay in releasing them is a waste of a scarce detention bed that

² The compliance data for AAP participants and the comparison groups are still being analyzed, and thus should be considered preliminary and subject to revision.

could be better used. Once participants have lost their claims, however, the risk of flight increases significantly, necessitating re-detention.

- Newly-arrived asylum seekers stand out as a group that does not need to be detained throughout their proceedings. They appear at their hearings at very high rates, and many of them win their cases. The combination of high appearance rates and high success rates makes their pre-determination detention a particularly wasteful use of scarce resources. Those asylum seekers who establish their claims would avoid all the human costs of detention. The government would avoid imposing those human costs on persons it subsequently finds have legitimately fled persecution elsewhere.
- Congress should restore discretion to the INS to release appropriately selected noncitizens subject to removal based on their criminal convictions. Lawful permanent residents with low-level criminal convictions appear at their hearings at very high rates, and a surprisingly high percentage wins their cases. As with asylum seekers, such a combination makes detention throughout proceedings (as is currently mandated by law) particularly wasteful and unnecessarily harsh.