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Supervised Release as an Alternative to Detention in Removal Proceedings: Some Promising Results of a Demonstration Project .... *Christopher Stone*

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SUPERVISED RELEASE AS AN ALTERNATIVE TO DETENTION IN REMOVAL PROCEEDINGS: SOME PROMISING RESULTS OF A DEMONSTRATION PROJECT

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I. INTRODUCTION

Arsajmin arrived at Kennedy Airport in New York City in February 1999 with a fraudulent Slovenian passport. When the U.S. immigration inspector confronted him, he explained that the passport did not belong to him, but that he had obtained it with the hope of seeking asylum in the United States from his homeland, the province of Kosovo. During questioning, Arsajmin explained that, as ethnic Albanians, he and his father were subject to continual harassment and had been arrested three times by the Serbian police. The Immigration and Naturalization Service (INS) officials put Arsajmin in an airport holding cell and, later that evening, moved him to the Wackenhut detention facility.

Why was Arsajmin detained? Three months later he might well have been accepted by the United States as a refugee from Kosovo, but in February he was just another undocumented immigrant seeking asylum. Still, why are such people detained? First, one might reason that detention would enable the INS to deport undocumented asylum seekers in the event that they lose their claims. If they are released before their claims are decided, they may flee, making deportation less likely. Second, detention may deter people from coming to the United States without advance authorization. If people know that they will be locked up in unpleasant surroundings, those with dubious claims may be less likely to come to the United States, resulting in fewer cases with false claims. Two similar levels of reasoning may also support the detention of immigrants who commit crimes or work without authorization. In each case, detention is intended both to assure that these people are available to be deported if they lose their cases in immigration court and to deter others from following in their path.

Detention, however, is simply not practical in every case. The INS has available approximately 18,500 detention spaces,[1] but it has more than

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1. 145 CONG. REC. H12284 (1999).

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100,000 people in deportation proceedings.[2] As fast as the INS can build or lease more cells, the government finds ways to detect even more people whom it must try to deport. The INS is therefore faced with the continuing dilemma of choosing how and when to use the scarce detention places that it has available. Indeed, the gap between those in proceedings and those in detention is greater now than it was four years ago despite unprecedented growth in detention capacity since that time.

A. *The Traditional Approach to Detention*

For many years, policymakers have sought to address this dilemma by focusing on *whom* the INS should detain. Congress and the INS have both, from time to time, established certain priorities for detention, stated in terms of the categories of people who should be detained. For example, in 1996, Congress passed legislation requiring that immigrants, even permanent residents, convicted of almost any crime be detained.[3] That same legislation adopted stricter standards, including initial mandatory detention, for obtaining full consideration of asylum claims by arriving aliens.[4] This statutory change led in New York, more than in many other districts, to the detention of far greater numbers of immigrants arriving by plane and seeking asylum. At the same time, the INS for policy reasons briefly moved undocumented immigrants working in various businesses higher on the detention priority list. As these examples illustrate, the debate over whom the INS should put at the top of its detention priority list takes place simultaneously and separately in Congress, the INS offices in Washington, and the individual INS district offices.

Because of prioritization, some categories of people are more likely than others to be detained. For example, of the roughly 170,000 people in INS detention at any point between September 1997 and September 1998, 60% were so-called "criminal aliens," although this group made up only 19% of people in removal proceedings in immigration court.[5]

So why was Arsajmin detained after the INS determined he had a credible fear of persecution?[6] As an asylum seeker in the New York District, apprehended at Kennedy Airport, Arsajmin was in a high priority group for detention. Indeed, the New York District is particularly aggressive in its detention of asylum seekers, even when the INS asylum officers have

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2. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR), MANAGEMENT INFORMATION SYSTEM REPORT (May 1998) (121,820 cases pending on June 1, 1998).

3. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 303(a), 110 Stat. 3009-546, 3009-585 (1996) (codified as amended at Immigration and Nationality Act (INA) § 236(c), 8 U.S.C. § 1226(c)).

4. *Id.* § 302(a), 110 Stat. at 3009-579 (codified as amended at INA § 235, 8 U.S.C. § 1225).

5. Data provided to the Vera Institute of Justice by the INS Office of Policy and Planning. *See also INS Oversight and Reform—Detention: Hearings Before the Subcomm. on Immigration of the Senate Comm. on the Judiciary*, 105th Cong. 5 (Sept. 16, 1998) (testimony of Doris M. Meissner, Commissioner, INS).

6. *See* INA §235 (b)(1)(B), 8 U.S.C. § 1225(b)(1)(B) (Supp. IV 1998).

determined that these immigrants have a credible fear of persecution in their home countries.

But after a few days in detention, something out of the ordinary happened to Arsajmin. Instead of remaining in detention, Arsajmin was sent for an intake interview with the Appearance Assistance Program (AAP). The AAP was an experimental program of community supervision operated for the INS by the Vera Institute of Justice as an alternative to detention.[7] The AAP represented a different kind of answer by the INS to the dilemma of how to allocate scarce detention resources. Instead of the traditional approach of focusing on *whom* to detain, the AAP focuses INS attention on *when* to detain.

B. *The Alternative Approach to Detention and the Appearance Assistance Program*

The traditional focus on high priority cases 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, those released at the start are never redetained, even if the immigration judge subsequently decides against them. 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." Second, many of those detained are subsequently released if their place in detention is later needed for a higher priority case. With each of these later releases, the detention space used up to that point is wasted. 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 all along. Finally, 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 immigration court.

The alternative approach begins with the observation that peoples' 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 hearing. As the time for their immigration court date approaches, they require tighter supervision, because their hope may be tempered with a realism that increases the inclination to abscond. If they win their cases, or if they agree to voluntary departure at that point, they may never need to be redetained. But if they lose their cases, their

7. The AAP was operational from February 1997 through March 2000.

hope is extinguished, and they should be detained to await deportation. In other words, the alternative 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 alternative 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 deported.

The INS asked Vera to test such an approach to detention in New York City beginning in February 1997. In August 1998 the INS extended the experiment to include people, like Arsajmin, who arrive at Kennedy Airport, seek asylum, and have a credible fear of persecution in their home countries.

A few days after his detention, Arsajmin met with an intake screener for the AAP. Arsajmin informed the screener that he had a brother who is a lawful permanent resident and several cousins who are U.S. citizens, all of whom lived in the Bronx. In the days that followed, the intake staff verified the address, secured Arsajmin's brother as a guarantor, and explained the rules and regulations of the program to both of them. The AAP then recommended Arsajmin for release under supervision.

Two weeks later, the INS approved Arsajmin's release from detention. The AAP required Arsajmin to report to the AAP office twice a month and to be in phone contact between those times. AAP supervision staff also made unannounced home visits and checked in with his guarantor on a regular basis. Arsajmin appeared as required at his master calendar hearing in June and was scheduled for an individual hearing in November 1999. In the meantime, his supervision officer worked to establish good habits of compliance: regular reporting and regular contact to keep the AAP informed about his whereabouts and activities. If the immigration judge were to eventually rule against his asylum claim, he would be redetained at that time. Violation of reporting conditions in the meantime could also have led the AAP to recommend his redetention before his final court appearance.

At the merits hearing the judge found that Arsajmin had established his right to asylum in the United States, but deferred a formal ruling because the INS had not yet secured a complete fingerprint report. The case was adjourned until March 2000, and then continued again until July 2000 because the FBI still had not returned the fingerprint report. Had Arsajmin not been released to AAP supervision in March 1999, he would have been detained at least until the judge had indicated that he was entitled to asylum, and possibly until the long-delayed fingerprint check had been completed.

The INS and Vera have tested different levels of supervision in the New York District to determine who is most amenable to supervision and what levels and strategies of supervision can attain compliance at the lowest cost. Arsajmin is one of 165 people who have been placed in an intensive program that requires mandatory reporting and in which the participant is at risk of redetention for failure in the program. The components of the supervision

program were modified over the course of the demonstration as AAP staff learned what works. Moreover, the populations included in the demonstration and the procedures for identifying them also changed with time.

To test the effectiveness of the experimental system, researchers at the Vera Institute of Justice have created experimental and comparison groups. Both types of groups consist of similar individuals, but those in the experimental groups are subject to the alternative approach to detention, while those in the comparison groups are subject to the traditional approach. To evaluate the success of the program, the researchers compare the rates of compliance in the various experimental and comparison groups and supplement these statistical inquiries with personal interviews of the program participants. The remainder of this article describes the results of that experiment and how such a system might eventually be extended across the country.

II. HOW THE APPEARANCE ASSISTANCE PROGRAM WORKS

When participants are released under supervision, their main contact with the AAP is through supervision and field staff. The supervision contacts and interventions are structured to encourage participants to comply with their legal obligations and the conditions of their supervision. The first contact that participants have with supervision is the orientation, which takes place soon after the individual is released from custody. During the orientation, the supervision staff reviews the rules of the program, gathers additional information from participants about where they spend their time, and sets a reporting schedule. Typically, intensive participants like Arsajmin must report to the office once every two weeks and call twice every week. In addition, participants are told that field staff will periodically make unannounced home visits to confirm that that they do in fact live where they say they live. During the orientation, participants are introduced to the removal process and given an opportunity to ask questions. If individual guarantors are involved, they also must attend the orientation to ensure that they understand their role and the participants' obligations.

Once the supervision staff establishes a relationship with the participants, routine supervision meetings and call-ins serve to remind the participants of their obligations, including appearing for court appointments and keeping the AAP informed of home addresses, telephone numbers, and other places where the participant can be contacted. If the final court order requires the participant to leave the United States, the supervision staff relies on these methods and occasions of contact to encourage participants to plan for their eventual departure. Because the AAP supervision staff monitors participants so closely, the staff is able to know promptly if and when participants fall out of compliance and can act accordingly. If attempts to restore participants to compliance are not successful, the supervision staff can recommend redetention.

Although the program's architects originally thought that it would be difficult to supervise people who are not eligible to apply to remain in the United States, the AAP has had surprising success supervising participants who are apprehended in work-site enforcement actions. Virtually none of these people is eligible to apply for any kind of relief other than voluntary departure. However, AAP supervision staff has developed techniques to facilitate participants' compliance with the voluntary departure process. When an immigration judge grants a participant voluntary departure, the focus of the supervision relationship shifts to planning for that participant's eventual departure from the United States. The supervision staff sets deadlines for the various requirements of the process, including the purchase of a ticket and procurement of a consular letter for departure verification purposes. Eventually, an AAP field or supervision staff member escorts the participant to the airport to confirm actual departure from the United States.

For example, Inder was an intensive participant from India who was apprehended by the INS at a car wash where he was working without authorization. Inder entered the United States without inspection and has been living in New York illegally for more than nine years. His four children are living in India. Since Inder speaks very little English, the AAP used Punjabi interpreters at his supervision meetings. A friend initially served as Inder's guarantor. The supervision staff soon determined, however, that Inder's friend was not an appropriate guarantor because he often traveled outside the United States, sometimes for months at a time. The supervision staff was then able to find a non-profit agency with a Punjabi speaker on staff to serve as guarantor.

Despite his bleak hopes for being able to remain in the country, Inder complied both with AAP and INS requirements. Three weeks after he left detention, he received a letter from the INS requiring him to come to the INS Detention and Deportation section for an interview. An AAP supervision officer accompanied him to the INS for this appointment. The INS interviewer, however, was not in the office, so Inder received another appointment, and he appeared for that as well.

The AAP does not offer legal advice and does not generally find lawyers for participants, but the staff does help participants find lawyers. The AAP made several attempts to help Inder find a lawyer but to no avail. After several failed attempts, Inder might have given up on the process and absconded, but the AAP was able to arrange an appointment for Inder to see Father Kelly, a Catholic priest who, as an accredited representative, provides free and low-cost assistance to many immigrants. After meeting with Father Kelly, Inder decided that he wanted to pursue voluntary departure.

In court, the immigration judge granted Inder voluntary departure with four months to leave the United States. At his next reporting session, his AAP supervision officer discussed the voluntary departure process and the importance of obtaining a consular letter, which Inder would need to submit to an

American consulate when he arrived in India. They also discussed his specific travel plans, including his planned departure date and the costs of an airline ticket.

Inder continued to comply with all of his obligations to the AAP, including attending his supervision meetings and calling in several times a week. At one of these supervision meetings, Inder brought in his airline ticket and a supervision assistant noticed that the ticket was dated five days after his voluntary departure deadline. She explained to Inder that he would be in violation of his voluntary departure order if he remained in the United States beyond his departure deadline. The assistant contacted the travel agency and was told that a $250 penalty would be applied to the ticket if the travel date were changed. She then called Air India and persuaded the airline to waive the penalty. In May 1999, an AAP staff member accompanied Inder to the airport as he left the country.

This combination of supervision and assistance is typical of successful community-based punishments used in the criminal justice system. Probation and parole departments that offer anger management courses, parenting classes, and other assistance find that those under their supervision report as required at high rates. Building on these lessons, the supervision staff provides a variety of resources to AAP participants. These include educational materials that help participants navigate the legal process, understand the legal consequences of noncompliance, and make informed decisions about their legal situations. The AAP has produced two videos to guide participants through the system: one on preparing for a first court hearing and a second on choosing a lawyer. The second of these, for example, helps participants find counsel, not by simply describing the steps, but by modeling behavior and arming viewers to be prepared, assertive, and forceful in locating, interviewing, and working with legal representatives.

Many regular and intensive participants use the AAP Resource Center. Here they can find referrals to food pantries, health clinics, English classes, and other social service agencies, all of which address potential obstacles to compliance. Asylum seekers make particular use of the Center's materials on country conditions, a resource that helps participants actively prepare their immigration cases. The Resource Center also increases participants' connection to the AAP and their resulting desire to accommodate the program's requirements of compliance with all legal obligations.

Only one aspect of the program—redetentions for serious program violations and absconding—largely failed to function as a result of the INS' inability to establish the necessary lines of authority and responsibility. Despite agreement about the importance of redetention at national, regional, and district office levels of the INS, the practical work needed to implement a redetention protocol never occurred.

This point is particularly useful in illustrating the practical difficulties of reorienting the use of detention in any large law enforcement agency, and in

the INS in particular. During the AAP's three years of operations, fifty-two recommendations for redetention were forwarded to the INS. Of these, only eleven resulted in redetention of the participant, and only one of those involved INS staff going into the field to locate a seriously-out-of-compliance participant. Even those redetentions that took place in the AAP office often required AAP intervention with INS officials at both the regional and headquarters levels in order to ensure action. Thus, more often than not, reliance on routine procedures was not possible.

For example, consider the case of James, a middle-aged participant who was facing deportation because of a criminal conviction. The AAP recommended his redetention for persistent failure to comply with program directives to obtain certain documentation. James lived in the same building in the Bronx as his mother and brother. Even after he was recommended for redetention, the AAP kept in daily telephone contact with James at his residence. During this time the AAP received information that James was using drugs. The AAP staff informed their counterparts at the INS of these facts and of the fact that James was home most of every day in the Bronx. Two months later, the assigned INS investigator received authorization from his superiors to go to James' Bronx address to try to redetain him. But before the investigator did so, he was asked to defer that effort because of a bedspace shortage. As a result of continued requests by the AAP, James was redetained a month later at his house, where he had remained throughout the time he was out of compliance with his AAP supervision requirements. He thus became the only AAP participant recommended for redetention whom the INS redetained in the community. James was subsequently removed from the country.

Or consider Vincent, an asylum seeker whom the AAP recommended for redetention based upon multiple program violations: moving without permission or informing AAP staff, and missing both a call-in and a supervision visit. At about the time of his missed supervision contacts, Vincent failed to appear for his hearing, and the court, in his absence, ordered him removed from the country. Later that day, AAP field staff discovered the address to which Vincent had moved, and they informed INS staff of the address, the person he was staying with, and their phone number. Nevertheless, INS officers were unable to act on the information, explaining that they had to follow lengthy call-in, warrant-drafting and case-assignment procedures before any effort could be made to effect a redetention. After the several weeks that these steps required had passed, Vincent was gone.

In designing future supervised release programs, the INS will have to remedy the redetention problems, or community supervision will not survive as a viable alternative to detention. When participants can see that serious violations do not lead to redetention, the entire effort becomes corroded. Still, despite these difficulties, the program produced surprisingly strong results.

III. RESULTS OF THE APPEARANCE ASSISTANCE PROGRAM

The AAP demonstration has shown that supervision can help the government get non-detained aliens in removal proceedings to comply with their legal obligations. 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 last day of program operations, 91% of AAP intensive participants had appeared for all of their required hearings, compared to 71% for the comparison groups that faced no risk of redetention. AAP intensive participants who completed their cases at the immigration court level were more likely to receive voluntary departure and less likely to be ordered removed in their absence than comparison groups.

The AAP had particular success supervising criminal aliens who were released to the program prior to the expiration of the Transition Period Custody Rules (TPCR).[8] The high rate of appearance at immigration court hearings for this population suggests that the mandatory detention of all criminal aliens is not required. The AAP's experience supervising criminal aliens is discussed in greater detail below.

The AAP is also meeting its goal of increasing compliance with the ultimate outcomes of its participants' immigration proceedings. Nearly seventy percent of AAP intensive participants who have reached the conclusion of all of their legal proceedings are in full compliance with the resulting obligations—including leaving the United States if ordered 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.

Participants under regular supervision are slightly more likely than the comparison groups to attend their hearings and to receive voluntary departure, and they are slightly less likely to be ordered removed in their absence. The differences in appearance rates are slight, but they are statistically significant.

There are some indications that regular supervision has different impacts on specific subgroups of participants. Regular program participants appre-

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8. IIRIRA § 303(b)(2)-(3), 110 Stat. at 586-87 provided that the effective date for the provisions of INA § 236(c), 8 U.S.C. § 1226(c), mandating detention for most criminal aliens throughout their removal proceedings, could be postponed for up to two years upon certifications by the Attorney General that insufficient detention space and INS personnel existed to implement those mandatory detention provisions. The Attorney General did in fact make such certifications, delaying the effective date of the mandatory detention provisions until October 9, 1998. In the interim, the TPCR were in effect, requiring the detention of limited categories of criminal aliens, but otherwise allowing the INS to exercise discretion in its release decisions.

hended in workplace enforcement actions, for example, do not seem to benefit from regular supervision. They achieved only a fifty-nine percent appearance rate, compared to the fifty-five percent rate achieved by the controls, but much lower than the eighty-eight percent rate achieved by their counterparts in the intensive program. There is no apparent difference in demographic or legal variables that distinguishes these groups, suggesting that most of those apprehended at work sites require an intensive program of supervision to achieve high compliance rates.

Other groups, however, seem to benefit from regular supervision. In particular, those people who already have strong reasons to comply, such as lawful permanent residents apprehended at Kennedy Airport, both criminal and non-criminal, seem to receive an additional incentive from supervision and increase their compliance relative to the controls. Participant interviews are providing early indications that the simplest, least costly elements of the regular program are the most valuable from the participant point of view. When regular participants were asked what they found helpful about the program, they mentioned provision of information, explanation of relevant issues, and anxiety relief. Over the course of the demonstration, the AAP developed operational strategies to increase the effectiveness of regular supervision. These strategies included a variety of opportunities to increase contact with regular supervision participants, including legal information sessions and the distribution of an AAP newsletter.

The AAP had success supervising so-called "criminal aliens," including lawful permanent residents facing removal proceedings because of criminal convictions. Since October 1998, virtually all criminal aliens are required to be detained throughout their removal proceedings.[9] Prior to October 1998, the INS had discretion to release some criminal aliens, and the AAP was thus able to supervise 16 intensive participants and 111 regular participants in this category. Each alien met AAP eligibility criteria, including passing a test to exclude those who posed a risk to public safety or had a history of absconding in other matters. Most participants complied with their appearance requirements and the ultimate outcomes in immigration court. The court appearance rate for the 16 intensive participants who were released to the program was 94%. Of the 111 criminal aliens who entered the regular supervision program, 102 (92%) appeared for all of their required hearings. Of the 62 participants who finished, 51 (82%) fully complied with their legal obligations. These data suggest, in short, that criminal aliens who do not pose a threat to public safety and who have a good history of compliance with prior legal proceedings are particularly amenable to supervision.

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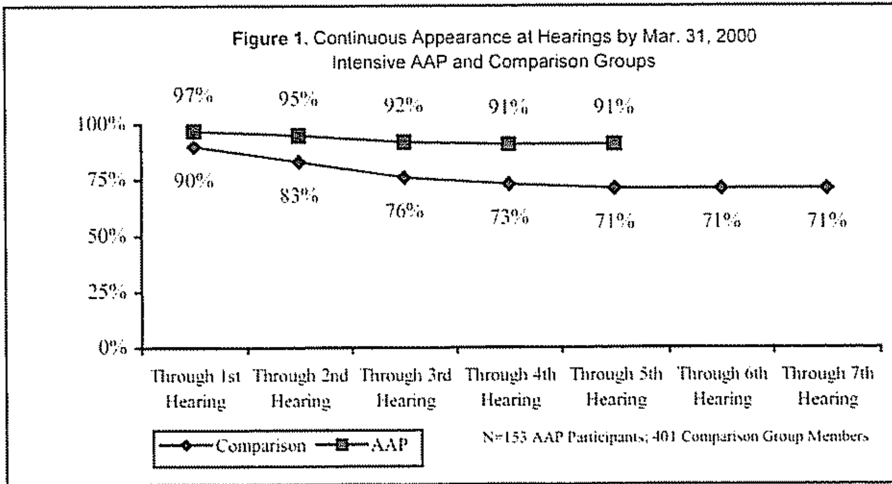
9. *See* INA § 236(c), 8 U.S.C. § 1226(c). The effective date of this provision is explained *supra*, note 8.



IV. A CLOSER LOOK AT INTENSIVE SUPERVISION

The AAP supervised three types of participants in the intensive program: criminal aliens, newly arrived asylum seekers, and undocumented individuals apprehended at worksite enforcement actions. The INS began to allow the AAP to screen asylum seekers detained at the Wackenhut detention facility near Kennedy Airport only in August 1998. This was an important breakthrough after seventeen months during which the AAP had been unable to test the amenability of newly arrived asylum seekers to supervision in the community. In the last year of the program, asylum seekers released from the Wackenhut detention center became the AAP's largest source of intensive participants.

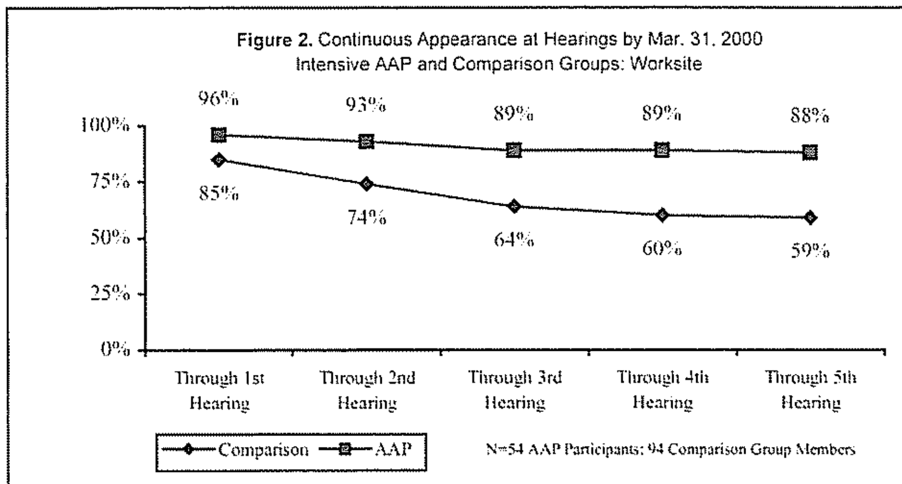
As Figure 1 illustrates, 91% of the AAP participants complied with all of their hearing requirements. By contrast, only 71% of the individuals in the comparison groups attended all of their required hearings. The differences are statistically significant, meaning that it is 99% certain that the 20-point spread between the AAP and the comparison groups is not due to chance.[10]

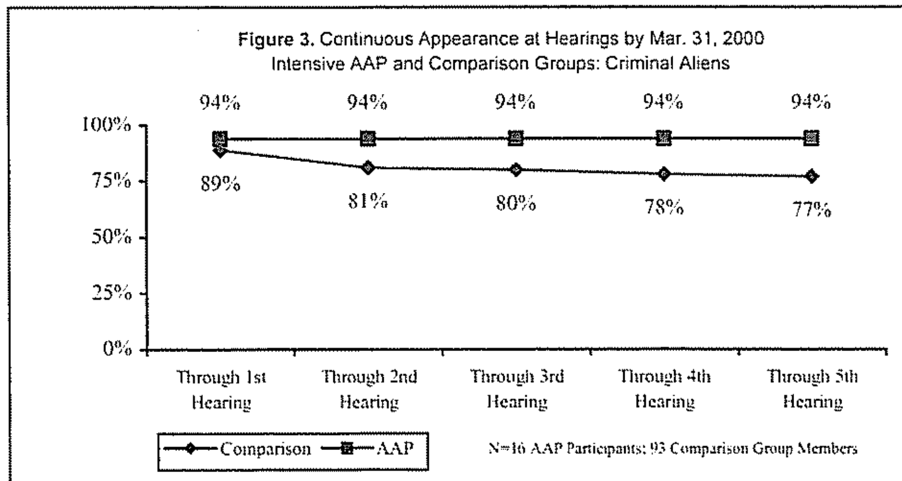
Each of the AAP participant groups demonstrated a high rate of compliance with hearing requirements. Through the end of the program, the rates of appearance were 94% for criminal aliens, 93% for asylum seekers, and 88% for the worksite group. These rates are higher than those achieved by the comparison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

The differences are greatest for the worksite group, where they are statistically significant at each hearing point.[11] Three different comparison groups are combined for the analysis of those apprehended at worksites, as

10. Significance at the .01 level was determined using the Fisher's Exact right tail test.

11. Using the Fisher's Exact right tail test, differences are statistically significant at the .05 level for the first hearing and at the .01 level for the second through fifth hearing.



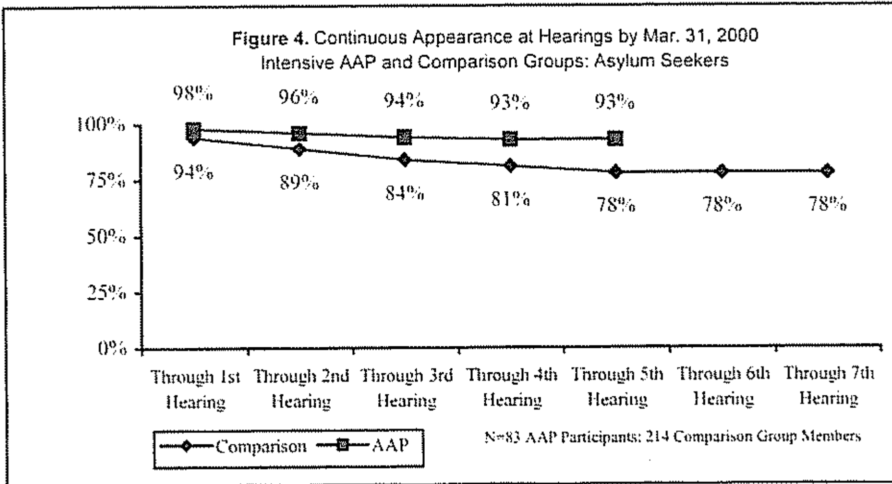


shown in Figure 2. The AAP participants complied at significantly higher rates than each of the three groups did.[12]

The criminal alien and asylum seeker participant groups also complied with hearing requirements at higher rates than the comparison groups, again despite the fact that the AAP participants faced the threat of redetention and the comparison groups did not (Figures 3 and 4). Unfortunately, the small number of cases involving criminal aliens means that the difference in this one group could be due to chance.

As of March 31, 2000, 109 AAP participants and 355 individuals in the comparison groups had completed their court cases and received final court orders. As is evident from the previous analysis of continuous compliance,

12. By the final hearing, the differences between AAP and each of the groups was significant at the .01 or .05 level, using the Fisher's Exact right tail test.



participants from all groups were significantly less likely than the comparison individuals to be ordered removed in their absence. Participants were significantly more likely to receive voluntary departure orders.[13]

Of those who received final court orders, 84 participants and 280 comparison group members were required to comply by the March 31 cut-off date. They had received court orders allowing them to remain in the United States, had been ordered removed in their absence, or had received orders of voluntary departure or removal with departure dates on or before March 31.

We consider individuals to be in compliance with final court orders when we can confirm that they were allowed to stay in the United States or that they departed the country as required. We consider individuals to be absconders when they were ordered removed in their absence or when we cannot confirm their departure.

One problem we encounter in measuring compliance is the time it takes the INS to determine that individuals required to leave the country have actually done so. If we relied only on INS sources, the compliance status of nearly one quarter of AAP participants would be unknown at this point. A second problem is that the INS underestimates compliance rates. For example, the agency records as absconders six AAP participants whose departure from the country has been confirmed by the program.

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

13. Differences in proportions of voluntary departure and in removals in their absence between AAP and comparison groups were statistically significant at the .01 level according to the Fisher's Exact right tail test.

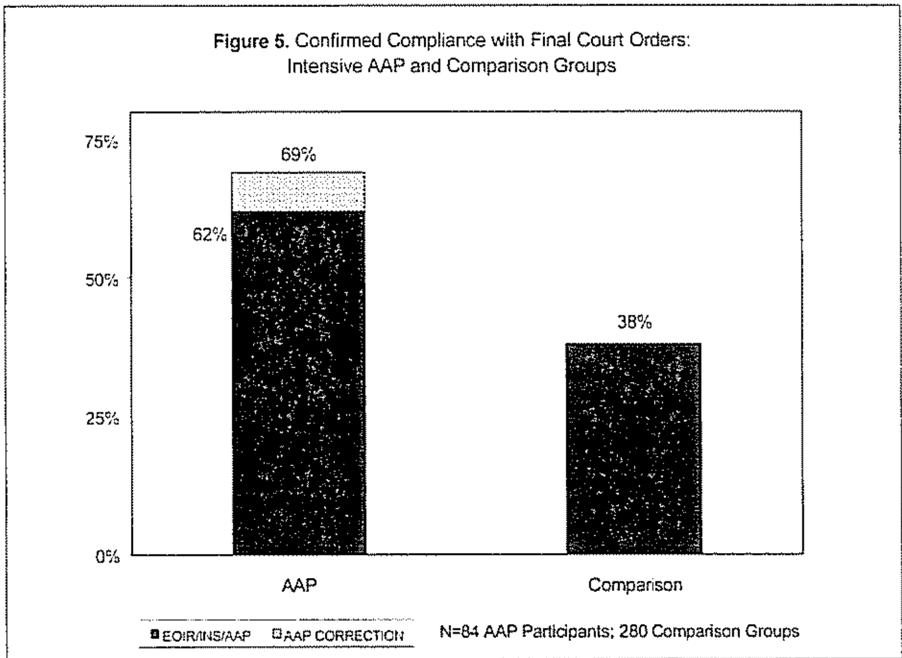


Figure 5. Confirmed Compliance with Final Court Orders: Intensive AAP and Comparison Groups

unknown to the INS.[14] In a separate analysis, we also use AAP data to correct for the INS under-estimation of compliance. Although it is quite likely that the INS also underestimates the compliance of the comparison groups, we cannot extend this second analysis to them because the INS is the only source that confirms their departure status.

Figure 5 shows the results. Using AAP only to fill in missing data, 62% of participants have complied with final court orders. When AAP is also used to correct for INS under-estimations, the confirmed compliance rate for participants increases to 69%. In both cases, the participants' compliance rate is over one and a half times greater than the 38% rate achieved by the comparison groups and the differences are statistically significant.[15]

V. CONCLUSIONS

What does this tell us about alternatives to detention in immigration cases? First, perhaps the most important findings are that most people want to comply, and that good supervision more than makes up for any deterrent impact that the possibility of immediate redetention might have. When the project began, practitioners, including judges and lawyers, insisted that no alien would come to court if she knew that she would be detained if she lost. Not so.

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14. The compliance status of six percent of the comparison groups is also unknown to the INS; we have excluded them from this analysis.

15. Differences between AAP and the comparison groups are statistically significant at the .01 level according to the Fisher's Exact right tail test.

Second, close supervision is a practical possibility, even in the complex neighborhoods of New York. In part, this has proved possible because of the role that guarantors play. Even among asylum seekers apprehended at airports as they enter the country for the first time, more than half have ties to local communities in the United States sufficient to make supervision viable. The image of the asylum seeker arriving with no contacts in the country is accurate only in a minority of cases.

Third, the INS needs to reorganize its operations if it is to hold people accountable even when they are not detained. Most of the systems, from the databases to the chains of command, are not designed to serve this mission. That process of change has already begun, and it should continue.

Fourth, the results of the AAP demonstration make the case for community supervision as an alternative to detention compelling. Using community supervision as a substitute for detention before final orders are made will increase the efficiency of the expensive detention system, and it will allow those who win relief, mostly asylum seekers, to avoid the pains of detention altogether.

Perhaps the largest question is whether the nation really wants a supervision system with integrity. The AAP shows that the INS can build and operate alternatives to detention with real teeth that improve integrity even while they relieve hardship. Implementing such alternatives will result in more deportations of those whom the law excludes, and less detention of those permitted to remain in the United States. The question now is whether that is a system the nation wants to own.