



The Real Alternatives to Detention

Immigration detention is growing at an unprecedented rate despite more humane, cost-effective alternatives that ensure due process. In May 2017, U.S. Immigration and Customs Enforcement (ICE) was funded to maintain detention levels of over 39,000 detention spaces each day.¹ ICE jails families and others seeking protection at our southern borders as well as those caught up in the Trump Administration's expanded immigration raids. **Immigration detention has been proven to traumatize vulnerable populations, jeopardize the basic health and safety of those detained, and undermine meaningful access to counsel in isolated, remote facilities. Immigration detention is driven by profit and politics, not public safety.** It continues to be used despite the availability of effective and cost-efficient alternatives to detention (ATD).

WHEN AND WHY SHOULD ALTERNATIVES BE USED?

A spectrum of alternatives to detention has long existed as the option the government should use in place of mass detention.² Many apprehended immigrants and asylum seekers already have strong community ties. Asylum seekers and those with credible legal claims and family and community in the United States have strong incentives to appear in immigration court and comply with requirements. Consequently, for many, release on recognizance or a minimal bond is appropriate because they pose little flight risk or risk to the community.

ATDs should be used as true alternatives to incarceration, not as a way to expand the population of individuals under government supervision and control. Here's why:

- **ATDs cost far less than detention, even if one is enrolled in ATD longer than in detention.** The Department of Homeland Security (DHS) estimated in its Congressional Budget Justification for fiscal year (FY) 2018 that it costs the taxpayers \$133.99 per day to hold an adult immigrant in detention and \$319.37 for an individual in family detention.³ In FY 2018, DHS estimated that the average cost per ATD participant would be \$4.50 per day.⁴ Using its own calculations of the cost of detention and ATD, a 2014 Government Accountability Office (GAO) report found that the daily rate of ATD was less than 7% of that of detention.⁵ Although participants may be enrolled on ATD for a longer period of time due to court delays when they are not detained, GAO found that an individual would have had to be on ATD for 1,229 days before time on ATD and time in detention cost the same amount.
- **ATDs are extremely effective at ensuring compliance.** ICE's current ATD program and several community supported pilot programs have shown high rates of compliance with immigration check-ins, hearings and - if ordered - removal. Over 95% of those on "full-service" ATDs (which include case management) are found to appear for their final hearings.⁶ Data from Contract Year 2013 from BI, Inc., the private contractor who operates some of the government's ATD programming, showed a 99.6% appearance rate at immigration court hearings for those enrolled in its "Full Service" program and a 79.4% compliance rates with removal orders for the same population.⁷ ICE's Family Case Management Program (FCMP), in which families received caseworker support without having to wear an ankle monitor, indicated compliance rates of 99% with court appearances, ICE appointments, and reported high compliance

¹ House Appropriations Committee, FY2017 Omnibus Summary- Department of Homeland Security Appropriations at page 2, available at: https://appropriations.house.gov/uploadedfiles/05.01.17_fy_2017_omnibus_-_homeland_security_-_summary.pdf.

² In 2009, a bipartisan Independent Task Force on U.S. Immigration Policy sponsored by the Council on Foreign Relations called for an expansion of the use of alternatives to immigration detention as one of its recommendations to ensure that all immigrants have the "right to fair consideration under the law and humane treatment." Council on Foreign Relations, Independent Task Force Report No. 63: U.S. Immigration Policy (2009), available at: https://www.cfr.org/sites/default/files/pdf/2009/08/Immigration_TFR63.pdf.

³ DHS Immigration and Customs Enforcement Congressional Justification for FY 2018 (ICE Budget Justification) at page 128, available at: https://www.dhs.gov/sites/default/files/publications/CFO/17_0524_U.S._Immigration_and_Customs_Enforcement.pdf.

⁴ ICE Budget Justification at 180.

⁵ United States Government Accountability Office. Alternatives to Detention, (Nov. 2014), available at: <http://www.gao.gov/assets/670/666911.pdf>.

⁶ United States Government Accountability Office. Alternatives to Detention, (Nov. 2014), available at: <http://www.gao.gov/assets/670/666911.pdf>.

⁷ American Civil Liberties Union. Alternatives to Immigration Detention: Less Costly and More Humane than Federal Lock Up at FN 9, available at <https://www.aclu.org/other/aclu-fact-sheet-alternatives-immigration-detention-atd>.

with removal orders.⁸ DHS's own Congressional Budget Justification released in May 2017 notes that, "[h]istorically, ICE has seen strong alien cooperation with ATD requirements during the adjudication of immigration proceedings."⁹

- **Alternatives are widely used in the pre-trial criminal justice context.** Alternatives to incarceration in the context of the criminal justice system have been broadly endorsed by organizations across the political spectrum, including the American Jail Association, American Probation and Parole Association, American Bar Association, Association of Prosecuting Attorneys, Heritage Foundation, International Association of Chiefs of Police, National Conference of Chief Justices, National Sheriffs' Association, Pretrial Justice Institute, and the Texas Public Policy Foundation.¹⁰
- **ATDs reduce trauma and promote a fair immigration process.** Research has widely demonstrated that detention is traumatic for asylum seekers and other immigrants, can cause lasting Post-Traumatic Stress Disorder (PTSD) and other harm, and impedes access to counsel and an understanding of the immigration process. Immigration law is incredibly complex, making access to legal representation a necessity to ensure due process. Only 14% of detained immigrants acquire legal counsel compared to 66% of non-detained immigrants.¹¹ Immigration law is incredibly complex and denying someone access to counsel is contrary to the basic principles of due process. Releasing individuals who exhibit no public safety risks allows them the opportunity to obtain legal counsel to navigate the difficult immigration process while receiving support from family members in the community. It also promotes family unity by allowing parents to care for their children.

WHAT KINDS OF ALTERNATIVES ARE APPROPRIATE AND EFFECTIVE?

In FY 2016 and 2017, DHS used several ATD programs that went beyond reliance on release on recognizance, parole, bond, or an order of supervision. These ranged from GPS monitoring devices, with or without case management, to conditions such as in-person reporting or telephonic check-ins, to the recently terminated Family Case Management pilot program (FCMP).¹² Both the FCMP and ICE's GPS monitoring programs are run by private contractors that are subsidiaries of the private, for-profit prison company Geo Group. It is important to note that currently DHS does not have guidance on whether and when to enroll individuals in a specific type of program or when to de-escalate them onto a less onerous ATD program after demonstrated compliance. In other words, DHS could far more effectively apply the full range of ATD programs to the diverse population of individuals who fall within their supervision.

The use of ankle monitors raises specific concerns; these devices carry with them a heavy societal stigma and immigrants who have been required to wear them report difficulties finding and maintaining employment and retraumatization for those previously victimized. DHS should only use GPS devices as true alternatives to detention for individuals who would otherwise be considered for placement in secure confinement by ICE. Such devices should never be used for individuals who can safely and effectively be released without monitoring.

Community-support ATD models, such as the FCMP, are far more appropriate and function best when operated directly by local community service providers. Holistic programs that offer case management services and facilitate access to legal counsel as well as safe and affordable housing have been shown to substantially increase program compliance without the extensive use of electronic monitoring. **ICE's formal but now terminated Family Case Management Program, for example, had compliance rates of 99 percent with immigration requirements such as court hearings and immigration appointments, at a cost of only \$36 per day per family.**¹³ Similar pilots have also shown excellent results at great cost-saving to the U.S. taxpayer, as follows:

⁸ Frank Bajak. ABC News. *ICE shuts detention alternative for asylum-seekers*, June 9, 2017, available at <http://abcnews.go.com/Politics/wireStory/ice-shutters-detention-alternate-asylum-seekers-47931693>.

⁹ ICE Budget Justification at 179.

¹⁰ See Julie Myers Wood and Steve Martin, *Smart Alternatives to Immigrant Detention*, March 28, 2013, available at <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/>; and American Civil Liberties Union, *Alternatives to Immigration Detention: Less Costly and More Humane than Federal Lock Up at FN 14*, available at: <https://www.aclu.org/other/aclu-fact-sheet-alternatives-immigration-detention-atd>.

¹¹ American Immigration Council, *Access to Counsel in Immigration Court* (Sept. 2016) at page 4, available at:

https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

¹² ICE Fact Sheet: Stakeholder Referrals to the ICE/ERO Family Case Management Program, available at: http://www.aila.org/infonet/ice-fact-sheet-family-case-management-program?utm_source=aila.org&utm_medium=InfoNet%20Search. See also Bajak, *ICE shuts detention alternative*.

¹³ Bajak, *ICE shuts detention alternative*.

- ***\$50 a day for an entire family to receive housing and wrap-around services (6% of the cost of family detention):*** Lutheran Immigration and Refugee Service (LIRS) began a Family Placement Alternatives pilot from May 2015 through October 2015 to provide wrap-around case management services that included housing for families without support, orientations on compliance, access to legal representation and wrap-around case management. LIRS demonstrated wrap-around case management services along with housing are still significantly cheaper than locking up an individual in detention: **family detention costs on average \$798 for a family (2.5 individuals) a 1,596% increase from the costs of the case management program.**¹⁴
- ***97% appearance rate:*** Two national alternatives to detention programs initiated in recent years reported 97% rates. In January 2012, LIRS started the Community Support Initiative to screen vulnerable immigrants in ICE custody for release and enrollment in community-based case management services. Between January 2012 and December 2015, 201 out of 214 clients with immigration appointments appeared for their appointments and 233 out of 240 showed up for their scheduled immigration court hearings. LIRS found community support services costs as little as \$7 dollars a day and an average of \$24 a day per individual.¹⁵ From January 2014 to March 2015, the U.S. Conference of Catholic Bishops (in partnership with ICE) ran a community support alternative to detention program that utilized case management and served individuals who would have not been ordinarily released from detention (primarily vulnerable individuals without community ties). The program yielded a 97% appearance rate and included four family units.
- ***96% appearance rate at 3% the cost of detention:*** In 1999, the Immigration and Naturalization Service (INS) partnered with LIRS to release 25 Chinese asylum seekers from detention and provide them shelter, food, medical care, and case management. Annual program costs were just 3% of what detention would have cost.
- ***97% appearance rate:*** From 1999 – 2002, INS collaborated with Catholic Charities of New Orleans to work with 39 asylum seekers released from detention and 64 “indefinite detainees” who could not be removed from the United States. The court appearance rate for participants was 97% and the program cost \$1,430 per year per client, a fraction of the cost of detaining them.
- ***91% appearance rate:*** Funded by INS, the Vera Institute of Justice studied over 500 participants in a supervised release and assistance program from 1997-2000. Participants were asylum seekers, non-citizens with criminal convictions facing removal, and undocumented workers. The program saved taxpayers \$4,000 per participant, boasted a 91% overall appearance rate at required hearings, and a 93% appearance rate for asylum seekers.

GUIDING PRINCIPLES FOR ATD

- Alternatives to detention are intended to reduce reliance on costly institutional detention, not to place additional restrictions on immigrants who – based on an individualized assessment – should be released.
- Anyone whose flight risk can be mitigated by ATD or bond should not be detained, even if there is bed space.
- ICE should utilize community-supported ATD instead of relying largely on electronic monitoring programs. Ankle monitors should never be used for individuals who can safely and effectively be released without monitoring.
- All custody and release decisions should be made after an individualized assessment of public safety and flight risk. ICE should conduct periodic reassessments on all individuals who remain detained, including after h/she has passed a credible/reasonable fear interview or obtained an attorney.
- The least restrictive alternative should be used in every case.

¹⁴ Lutheran Immigration and Refugee Service, *Family Placement Alternatives: Promoting Compliance with Compassion and Stability through Case Management Services* (April 2016), available at: http://lirs.org/wp-content/uploads/2016/04/LIRS_FamilyPlacementAlternativesFinalReport.pdf.

¹⁵ *Id.* See also Lutheran Immigration and Refugee Service, *Unlocking Liberty: A Way Forward for US Immigration Detention Policy* (2011), available at: <http://lirs.org/wp-content/uploads/2012/05/RPTUNLOCKINGLIBERTY.pdf>.

- ICE should ensure adequate staffing for ATD programs *within ICE*, and the availability of ATDs in all ICE field offices, so that the agency can utilize all available slots.
- ICE should adopt and implement a clear and simple process for de-escalation for those individuals who are placed on ATDs involving electronic monitoring.
- Across the ATD spectrum, monitoring and check-in requirements should be reasonable and the least onerous possible so as not to impinge on the participant's ability to participate in her legal case and maintain steady employment.

ALTERNATIVES ARE ONE CRUCIAL PART OF THE PUZZLE

ATDs have been widely shown to be effective and cost-efficient. ATDs are also key to supporting the integrity of the entire immigration system. A fair, just, and effective immigration system should recognize the following:

- ***Access to counsel is crucial in immigration cases.*** Studies have repeatedly shown that immigrants with legal counsel are more likely to obtain successful immigration outcomes and are much more likely to apply for relief from deportation.¹⁶ For example, recent data shows that families with counsel appear at court 98% of the time.¹⁷ Individuals who feel they have interacted with a fair system are more likely to accept the final determination and comply with removal orders.¹⁸ Yet detention precludes fundamental access to counsel - only 14% of those in detention are represented by counsel. **ATD programs allow individuals to be in their communities and ideally can directly help with referrals to immigration lawyers and other support.**
- ***Clear information supports compliance.*** People who are clearly informed about their obligations before being released are more likely to meet those obligations. But many families and adults who are released from immigration custody at the border or from detention either receive insufficient information on their requirements, receive information in a language they do not understand, or simply do not understand the information without a clear explanation of the process. **ATD programs, especially those with community-based case workers, ensure that individuals facing removal proceedings receive clear guidance on the immigration process and have a point of contact in case of questions.**
- ***Courts must have resources to hear cases in a timely, but not rushed, manner.*** The immigration courts are severely backlogged, meaning that non-detained individuals may wait years for a hearing. Individuals need time to find legal representation and prepare a case, but extreme delays undermine the immigration system's integrity. Yet the expedited docketing procedures and unnecessarily expansive enforcement operations put in place by the administration following the President's immigration-related executive orders are greatly exacerbating this problem. The courts must be properly resourced to ensure that everyone has a timely but fair immigration proceeding.

The American Immigration Lawyers Association, Lutheran Immigration and Refugee Service, National Immigrant Justice Center, U.S. Conference of Catholic Bishops Migration and Refugee Services, and Women's Refugee Commission call on Congress and DHS to immediately adopt policies to reduce the numbers of men, women and children held in a broken immigration detention system in favor of community-based alternatives to detention.

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¹⁶ For example, a robust review of representation rates over the course of years reveals that detained immigrants are almost 11 times more likely to seek relief such as asylum than those without representation and immigrants who were never detained are five times more likely to seek relief with an attorney. See American Immigration Council, *Access to Counsel in Immigration Court* (Sept. 2016) at page 2, available at: https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

¹⁷ Human Rights First, Fact Sheet: Immigration Court Appearance Rates (Nov. 2016), available at: <http://www.humanrightsfirst.org/sites/default/files/hrf-immigration-court-appearance-rates-fact-sheet-nov2016.pdf>.

¹⁸ See International Detention Coalition, *There are Alternatives* (revised edition) (2015) at 9-11, available at <http://idcoalition.org/publication/view/there-are-alternatives-revised-edition/>.