

Alternatives to Immigration Detention: Less Costly and More Humane than Federal Lock-up

Alternatives to detention (ATD), including release on recognizance, community support, or bond, as well as formal monitoring programs, are effective, more humane, and far less costly than institutional detention. Yet each year U.S. Immigration and Customs Enforcement (ICE) spends \$2 billion in taxpayer dollars for immigration detention – whose sole purpose is to make sure people show up for their court hearings and comply with final case outcomes – and just a fraction of that amount on alternatives.

ICE detains non-citizens who are awaiting decisions in their removal cases – including asylum seekers fleeing persecution in their home countries, individuals who overstayed their visas, recent border crossers, and lawful permanent residents with criminal records – in a sprawling network of approximately 34,000 beds in almost 200 facilities across the country. These facilities include ICE-run facilities, dedicated facilities operated by private prison companies, and dedicated and non-dedicated local jails paid per bed by ICE or the U.S. Marshals under intergovernmental agreements. In Fiscal Year 2013, ICE detained almost 441,000 individuals.¹ The FY 2014 Omnibus provides \$1,993,770,000 for ICE Custody Operations – i.e. immigration detention. Adult immigration detention costs \$161 per person per day.²

In FY 2014, ICE expanded its family detention capacity by 1,200 beds, and announced plans to build a new family detention facility with 2,400 additional beds, for a total of almost 4,000 new detention beds for mothers and children. The Senate estimates that family detention costs \$266 per person per day.³ According to news reports, a brand-new family detention facility in Dilley, Texas, will cost taxpayers an estimated \$298 per bed per day⁴ or approximately \$261 million annually.

Despite the agency's extravagant expenditures on detention, since 2009, ICE has had a single ATD program: ISAP II (Intensive Supervision Appearance Program). ISAP II is operated by Behavioral Interventions (BI), a for-profit firm owned by the private prison company GEO Group. ISAP II relies on the use of electronic ankle monitors, biometric voice recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants. Effective September 8, 2014, ICE renewed its ISAP II contract with BI for five years, under which GEO expects to generate \$47 million in annualized revenues.⁵ In Contract Year 2013, ISAP II supervised a cumulative 40,613 individuals, less

¹ U.S. Department of Homeland Security, Office of Immigration Statistics, "Immigration Enforcement Actions: 2013," available at http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf.

² The Consolidated Appropriations Act of 2014 (HR 3547) provides \$1,993,770,000 for ICE Custody Operations. \$1,993,770,000/365 days equals \$5.46 million per day. \$5.46 million per day/34,000 detention beds equals \$161 per bed per day. See H930 at <http://www.gpo.gov/fdsys/pkg/CREC-2014-01-15/pdf/CREC-2014-01-15-house-bk2.pdf>.

³ Press release, "Chairman Mikulski Releases Summary of Emergency Supplemental Funding Bill," July 23, 2014, available at <http://www.appropriations.senate.gov/news/chairwoman-mikulski-releases-summary-emergency-supplemental-funding-bill>.

⁴ Julia Edwards, "New U.S. migrant detention center to be run by firm criticized by advocates," Sept. 23, 2014, available at <http://www.reuters.com/article/2014/09/23/usa-immigration-detention-idUSL2N0RO23O20140923>.

⁵ Press release, "The GEO Group Awarded Contract by U.S. Immigration and Customs Enforcement for the Continued Provision of Services under Intensive Supervision and Appearance Program," Sept. 10, 2014, available at <http://www.businesswire.com/news/home/20140910005643/en/GEO-Group-Awarded-Contract-U.S.-Immigration-Customs#.VCzPTcTJNh5>.

than one-tenth the number of individuals ICE imprisoned.⁶ The FY 2014 Omnibus provides \$91,440,000 for ICE Alternatives to Detention.⁷ Costs are estimated at 17 cents to \$17 per person per day.⁸

In Contract Year 2013, BI reports a 99.6% appearance rate at immigration court hearings for Full-Service participants, and a 79.4% compliance rate with removal orders for the same population.⁹ This data does not take into account those individuals on ISAP II who are granted legal relief.¹⁰

Community support programs – not currently funded by ICE – provide case management and referrals to legal and social services providers for non-detained individuals. Studies have found that such support helps people understand their legal obligations and improves court appearance rates and compliance with final case outcomes, while minimizing the damage to their mental and physical health and the disruption to their families and communities caused by institutional detention.¹¹ Legal representation in particular is a strong indicator of compliance with court dates.¹² Lutheran Immigration and Refugee Service and the U.S. Conference of Catholic Bishops have piloted community support programs in cooperation with ICE, but they have not received the funding necessary to scale up these pilots.

Alternatives are widely used in the pre-trial criminal justice context.¹³ They are recommended as cost-savers by 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, Texas Public Policy Foundation, and the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy.¹⁴ Nations across the globe are increasingly relying on alternatives to immigration detention, particularly for asylum seekers.¹⁵

⁶ *Intensive Supervision Appearance Program II: Contract Year 2013 Annual Report* (BI Incorp. 2013).

⁷ See H930 at <http://www.gpo.gov/fdsys/pkg/CREC-2014-01-15/pdf/CREC-2014-01-15-house-bk2.pdf>.

⁸ U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Salaries and Expenses, FY2014 Congressional Budget Justification p. 6, available at <https://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>.

⁹ *Intensive Supervision Appearance Program II: Contract Year 2013 Annual Report* (BI Incorp. 2013). This report is the only existing source of data regarding ISAP II compliance rates.

¹⁰ The government should evaluate ATD effectiveness according to compliance with the case outcome, whether formal removal order, voluntary departure, or legal relief.

¹¹ See Alice Edwards – UNHCR Expert Consultant, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum Seekers, Stateless Persons, and Other Migrants* (Geneva: UNHCR, 2011), PPLA/2011/01.Rev.1; International Detention Coalition, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (2011); and Lutheran Immigration and Refugee Service, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* (2012).

¹² For example, data obtained by Syracuse University's Transactional Records Access Clearinghouse shows that more than 90 percent of children in removal proceedings who have attorneys appear for their court hearings. See American Immigration Council's Immigration Policy Center, "Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court," July 29, 2014, available at <http://immigrationpolicy.org/just-facts/taking-attendance-new-data-finds-majority-children-appear-immigration-court>.

¹³ Julie Myers Wood and Steve J. Martin, *WOOD AND MARTIN: Smart Alternatives to Immigrant Detention*, Washington Times, Mar. 28, 2013, available at <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/>.

¹⁴ See American Jail Association, Resolution on Pretrial Justice (Oct. 24, 2010), available at <http://www.pretrial.org/download/policy-statements/AJA%20Resolution%20on%20Pretrial%20Justice%202011.pdf>; American Probation and Parole

ICE often insists that detention is the only way to ensure removal. This is not because non-detained individuals abscond, but because the non-detained docket is backlogged, so cases can take months or years to conclude, as compared with shorter case times for individuals on the detained docket. The solution is not more detention, but adequate resourcing of the immigration courts in order to reduce the backlog in the non-detained docket.

ACLU Recommendations to ICE:

- **ICE should screen every apprehended individual for need to detain using the existing risk classification assessment tool. Anyone who is not a flight risk or whose flight risk can be mitigated by an alternative to detention, including release on recognizance, community support, or bond, or a formal monitoring program, should not be detained, regardless of available bed space. ICE should never deny release or bond as a blanket policy.**
- **Individuals in removal proceedings placed in an alternative to detention should be placed in the least restrictive alternative necessary to ensure court appearance and compliance with final case outcomes.**
- **ICE should periodically re-screen every detained individual, including after he/she has passed credible fear or obtained an attorney, for need to detain.**
- **ICE should invest in alternatives to detention, including community support programs, rather than expanding detention.**
- **ICE should ensure that alternatives to detention, including community support programs, are available in all field offices.**

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Association, APPA Supports Pretrial Supervision Services (June 15, 2010), available at http://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IE_NewsRelease&wps_key=4ce5b0cc-e5d6-4407-bcab-096640386f02; American Bar Association, ABA Criminal Justice Standards on Pretrial Release – Third Edition (Oct. 28, 2002), available at <http://www.pretrial.org/wpfb-file/aba-standards-on-pretrial-release-2002-pdf/>; Association of Prosecuting Attorneys, Policy Statement on Pretrial Justice, available at <http://www.pretrial.org/wp-content/uploads/2013/02/APA-Pretrial-Policy-Statement.pdf>; Matt Mayer, The Heritage Foundation, Heritage Web Memo 3455: Administrative Reforms Insufficient to Address Flawed White House Immigration and Border Security Policies (Jan. 10, 2012), available at <http://www.heritage.org/research/reports/2012/01/administrative-reforms-in-immigration-and-border-security-policies>; International Association of Chiefs of Police, “Law Enforcement’s Leadership Role in the Pretrial Release and Detention Process (Feb. 2011), available at <http://www.pretrial.org/wp-content/uploads/2013/02/IACP-LE-Leadership-Role-in-Pretrial-20111.pdf>; National Conference of Chief Justices, Resolution 3, Endorsing the Conference of State Court Administrators Policy Paper on Evidence-Based Pretrial Release (Jan. 13, 2013), available at <http://www.pretrial.org/wp-content/uploads/2013/02/CCJ-Resolution-on-Pretrial-1.pdf>; National Sheriffs’ Association, National Sheriffs’ Association Supports and Recognizes the Contribution of Pretrial Services Agencies to Enhance Public Safety (June 18, 2012), available at <http://www.pretrial.org/wp-content/uploads/filebase/policy-statements/NSA%20Pretrial%20Resolution.pdf>; Pretrial Justice Institute, The Solution, available at <http://www.pretrial.org/solutions/>; Marc Levin, Texas Public Policy Foundation, “Public Safety and Cost Control Solutions for Texas County Jails (Mar. 6, 2012), available at <http://www.texaspolicy.com/center/effective-justice/reports/public-safety-and-cost-control-solutions-texas-county-jails>; and Council on Foreign Relations’ Independent Task Force, Task Force Report: U.S. Immigration Policy (July 2009), available at <http://www.cfr.org/immigration/us-immigration-policy/p20030>.

¹⁵ *Forced Migration Review: Detention, alternatives to detention, and deportation*, Issue 44 (Sept. 2013) available at <http://www.fmreview.org/en/detention.pdf>, pp. 40-62.