



POLICY BRIEF

COMMUNITY-BASED ALTERNATIVES TO
IMMIGRATION DETENTION

Community-based alternatives to detention are cheaper, more effective, and more humane than the current U.S. immigration detention system¹

EXECUTIVE SUMMARY

Experience in pilot programs here and abroad has demonstrated that community-based alternatives to detention (ATDs) are cheaper, more effective, and more humane than the current U.S. immigration detention system. In 2010 alone, the United States will spend approximately \$1.77 billion to detain close to 400,000 immigrants, despite the availability of far more cost effective alternatives to detention.

Community-based ATDs provide tailored supervision and services to immigrants to ensure that they show up for their immigration court dates.

ATDs have been shown to be extremely effective, without relying on overly restrictive surveillance and reporting mechanisms such as electronic monitoring, at a far lower cost to the government than full physical detention. Community-based ATDs have several key elements: traditional **case management** and **referrals to community support services** with **appropriate monitoring** and **supervision** to ensure that immigrants attend court dates and comply with orders of removal.

Alternatives to detention are effective in achieving the government's immigration goals.

The government can use ATD programs under current law: the Department of Homeland Security (DHS) already has the discretion to release immigrants on their own recognizance, on bond, on parole or into more closely supervised community custody programs, which include ATD programs. Yet, Immigration and Customs Enforcement (ICE, the enforcement agency within DHS) routinely fails to exercise this discretion and has admitted to an over-reliance on incarcerating immigrants in jails and prisons.

The government's stated immigration goal is to ensure that immigrants appear for their immigration court dates and when necessary, comply with removal orders. Because community-based ATDs ensure that program participants have access to low or no cost support services, such as stable housing, medical care, and legal counsel, the government can increase the likelihood that participants will attend all court dates, be able to participate in the court process in an efficient manner, comply with an order of removal where applicable, or voluntarily depart if it becomes clear that they do not have a viable claim for relief. Established foreign ATD programs, domestic pilots, and analogous programs in the criminal justice system have all demonstrated that community organizations are successful at facilitating these goals.

ATDs are more cost effective and fiscally sustainable than the current detention system.

Immigration detention is expensive and inefficient, costing taxpayers \$1.77 billion per year. In contrast, the costs of ATD programs are substantially less than incarceration. The use of detention for immigrants who do not genuinely require the constant form of control that detention represents wastes government resources and unnecessarily overburdens the detention system.

Community-based ATDs are a more humane alternative to incarceration.

ATDs achieve the government's immigration goals without the enormous human toll of detention. The current detention regime is riddled with abuses. Individuals in detention experience mistreatment and neglect by detention guards; have virtually no ability to access lawyers for help with their immigration cases; wait for months and years in detention because of a clogged and inefficient immigration court system; and face incarceration far away from their families. By contrast, community-based ATDs allow immigrants who would otherwise be jailed for months or even years to return to their families and communities while their cases are pending. For example, in New Jersey, the Reformed Church of Highland Park has negotiated with DHS to release church members facing deportation proceedings into its care, in lieu of detention. To date, at least 70 men have been allowed to stay in the community and support their families while they prepare their immigration cases. Not a single one of these men has missed a court appearance.

KEY RECOMMENDATIONS

- ICE should make individualized custody determinations through the use of a risk assessment tool. ICE should only be able to impose physical incarceration if it articulates why a person is not suitable for release, parole, bond, or an ATD program.
- ICE should partner with community-based non-governmental organizations with expertise in providing ATD services, including screening, legal referrals and social services.

- When ICE chooses to detain an individual despite the availability of ATDs, it should provide that individual with a written statement of reasons for detention.
- Electronic monitoring is not an ATD. ICE should only impose electronic monitoring if: (a) ICE would otherwise hold an individual in a detention facility, and (b) ICE demonstrates that no other less restrictive measure will ensure appearance at removal proceedings. ICE should also mandate a periodic review of each individual's case when highly restrictive supervision and monitoring mechanisms are imposed.
- ICE should collect data on an ongoing basis and conduct periodic evaluations of ATD programs to monitor the cost-efficiency and effectiveness of the programs. ICE should make the data and evaluation results publicly available.

COMMUNITY-BASED ALTERNATIVES TO IMMIGRATION DETENTION

In 2010 alone, the United States will spend approximately \$1.77 billion to detain close to 400,000 immigrants,² despite the availability of secure, cost-effective alternatives to detention (ATDs). Community-based ATDs ensure that immigrants appear at immigration proceedings without resorting to physical incarceration. Instead, ATDs ensure appearance through a mixture of caseworker mentoring and referrals for social service and legal advice. Community-based ATDs should serve as a substitute for physical incarceration when some form of supervision or control is required to ensure appearance at immigration court proceedings. The government should only resort to physical detention in an individual's case if it can show that an ATD will not be effective in ensuring appearance or that the person is not suitable for release.

The existence of effective ATDs suggests that resorting to the routine or automatic use of detention as a measure to ensure appearance and compliance is unnecessary and disproportionate. The effectiveness of ATDs has been repeatedly illustrated by experiences with domestic pilots like the Vera Appearance Assistance Project (AAP), immigration ATD programs in several other countries, including Australia, Canada, and Belgium, and ATD programs that have been used for decades in the criminal justice context.³ These programs demonstrate that community-based ATDs prevent wasteful government spending on mass incarceration while yielding high compliance rates.

Despite criticism from international human rights bodies and experts against the routine use of detention as a form of immigration control,⁴ the U.S. government continues to rely heavily on immigration detention, at a high financial and human cost. For example, U.S. Immigration and Customs Enforcement (or "ICE", the Department of Homeland Security (DHS) component which oversees immigration detention and deportation) has a \$1.77 billion budget for custody operations,⁵ which ICE estimates it will use to incarcerate close to 400,000 immigrants in FY 2010.⁶ By contrast, only approximately 16,000 immigrants are currently enrolled in government-sponsored ATD programs.⁷ The government's use of detention for immigrants who do not genuinely require constant physical control and supervision to ensure compliance constitutes an improper use of government resources, particularly when space in detention facilities is expensive and limited.

People held in immigration detention are not serving criminal sentences—they are awaiting a final decision on their immigration claims or are awaiting deportation. Among those detained for months or even years are survivors of torture, asylum seekers, victims of trafficking, families with small children, the elderly, individuals with serious medical and mental health conditions, and lawful permanent residents with longstanding family and community ties who are facing deportation because of previous criminal convictions, some of which are for petty offenses such as shoplifting and low-level drug crimes.⁸ The impact of immigration detention is particularly acute for those subjected to mandatory detention without a bond hearing, including individuals who have fled persecution and long-time lawful permanent residents with certain convictions.

Under current law, ICE has the discretion to release certain immigrants on their own recognizance, on bond, on parole, or into supervised community custody programs, including ATD programs. Notwithstanding this discretion, ICE has admitted to an over-reliance on incarcerating immigrants.⁹ Even when ICE decides not to detain an individual, the agency routinely opts for extremely onerous and intrusive supervised programs. ICE relies on two supervision programs, Technology Assisted (TA) and Full-Service (FS). Although ICE erroneously refers to these programs as ATDs, they lack the necessary case management and services to qualify as ATDs. Instead, the programs include highly restrictive monitoring and reporting mechanisms that are often unnecessary and disproportionate to achieving the government's objective of ensuring appearance at immigration court proceedings. In many cases, the custodial nature of these programs renders them an alternative form **of** detention, rather than a true alternative **to** detention.

WHAT ARE THE COMPONENTS OF A SUCCESSFUL ALTERNATIVE TO DETENTION PROGRAM?

After members of their congregation and community were arrested and detained by ICE, the Reformed Church of Highland Park in New Jersey wanted to act. The pastor of the church, Reverend Seth Kaper-Dale, contacted ICE, and promised that, if released into his custody, the immigrants would show up to their hearings.¹⁰ ICE agreed to release the church members and to work with Rev. Kaper-Dale rather than keep the immigrants in detention.¹¹ So far, not a single immigrant has missed a court appearance, and at least 70 men have been allowed to stay in the community and support their families while their immigration proceedings are still pending.¹² Additionally, as a result of the relationship Kaper-Dale has developed with ICE, he has now started to provide shelter and social services for asylum-seekers who were previously detained.

Community-based alternative to detention programs are designed to ensure that immigrants appear for immigration proceedings, without relying on detention or overly restrictive surveillance and reporting mechanisms such as electronic monitoring devices. Evidence from domestic and international models has shown that successful ATDs have several key elements: traditional **case management** and **referrals to community support services** with **appropriate monitoring** and **supervision** to ensure that immigrants attend court dates and comply with orders of removal. ATD programs allow immigrants who would otherwise be jailed

for extended periods of time at great cost to the government to return to their families and communities while their cases are pending. The community services assist ICE in meeting its objective—ensuring individuals comply with immigration proceedings—while enhancing participants' capacity to prepare their immigration cases, a process severely hindered in detention facilities which are often located in rural areas far from legal service providers and community support.

Community based ATDs involve community organizations and are structured around a combination of appropriate reporting requirements, the frequency of which is based on individualized assessed risk. Community-based ATDs also provide participants information about their rights and obligations regarding their immigration cases. These

programs assist immigrants in preparing their cases and obtaining basic social services, such as housing, medical treatment and where authorized, employment.

For a community-based ATD program to be successful, the use of a sophisticated and dynamic “risk assessment” tool is essential. A risk assessment tool includes a series of questions aimed at determining whether an individual can be released to the community while his or her immigration case is pending, or instead, whether the individual presents a flight risk or a threat to public safety. The tool allows ICE officials to make informed custody determinations by comparing an inventory of factors, such as age, gender, ties to the community and family circumstances, immigration case status and eligibility for relief, criminal history, medical conditions, and other vulnerabilities that would place an individual at heightened risk in a detention facility, such as medical and mental health issues, pregnancy, or past trauma. A comprehensive and robust risk assessment tool would enable ICE to make educated decisions about who is detained and for how long – and would also make better use of limited government resources. For those who cannot be released on their own recognizance, bond, or parole, a risk assessment tool

determines not only whether a program with heightened levels of supervision can mitigate the risk, but also what particular vulnerabilities individuals may have so that they can be matched with services they may need to enable them to comply with their immigration proceedings. To adequately monitor and supervise participants, risk must be assessed on a periodic basis. ICE can then identify a change in circumstances which could impact the level of supervision required, such as when a change occurs in an individual’s immigration case status or family circumstances, or when an individual has demonstrated an ongoing willingness to comply with immigration authorities.

While ICE has recognized the need for individualized risk assessment and has taken steps in consultation with NGOs to develop a risk and custody classification instrument, the instrument remains in the pilot stage and has not yet been implemented nationwide.¹⁴ Experts have expressed concern because when assessing risk, the pilot instrument calls for ICE agents to continue to consider detention as a first resort rather

The Appearance Assistance Project: A Domestic Alternative to Detention Pilot Program

The Vera Institute of Justice, a New York City based NGO, operated the Appearance Assistance Program (AAP) from February 1997 to March 2000. Sponsored by INS (ICE’s legacy agency), the AAP was a program that allowed more than 500 immigrants to remain in their communities at a far lower cost to the government than if they had otherwise been detained for the duration of their immigration proceedings. At the conclusion of the program, the Vera Project reported to INS that over 90% of participants had attended all required court hearings, and that supervision was 55% less expensive than detention for asylum seekers and 15% less expensive for lawful permanent residents with criminal records.

The Appearance Assistance Program was designed to ensure both that immigrant participants attended all hearings and received necessary social services to improve their ability to participate in the court process. After evaluating detainees using their own risk assessment tool, AAP staff accepted people they believed would be successful in their program. AAP staff provided participants with information about legal procedures, reminders of court dates, and referrals to social services and pro bono lawyers.¹³

than presuming release until and unless there is a reasonable basis to believe an individual poses a flight risk or risk to public safety.

ICE'S Existing Programs Are So Restrictive and Onerous That They Do Not Constitute True ATDs

Instead of employing community-based ATDs, ICE has expanded its reliance on programs that share more in common with a community *custody* program similar to home detention than true ATD programs. Unlike community-based ATDs, which are designed to provide necessary services to ensure that immigrants comply with requirements associated with their immigration cases, ICE's current programs rely heavily on onerous restrictions including telephonic reporting, curfews, and Global Positioning System (GPS)-enabled electronic monitoring via ankle devices.

The burdensome electronic ankle monitors used by ICE are similar to those placed on pre-and post-trial offenders in the criminal justice system.¹⁵ At about five inches square, they are often too big to conceal beneath normal street clothes.¹⁶ The batteries for the ankle monitors must be recharged daily, sometimes for up to three hours, requiring that a person wearing the bracelet sit or stand near a wall socket for several hours each day.¹⁷ The ankle monitors are also uncomfortable, particularly for pregnant women, and many participants describe the experience as one of shame and humiliation.¹⁸ The ankle monitors impose such severe restrictions on participants that they make it difficult to maintain employment, find housing, or go about daily life.

Under ICE's existing programs, participants may also be subject to a variety of control and supervision tools, including: unannounced home visits; a 12-hour curfew, which in most cases means they must be in their homes by 7 p.m. every night of the week; up to three in-person meetings with program staff each week, which can require travel up to 85 miles from participants' place of residence, interfering with their employment and imposing a financial burden; and installation of biometric voice recognition software on their home telephones to enable random checks conducted via telephone, sometimes in the middle of the night, to ensure participants are at home.¹⁹

Even beyond these onerous restrictions, ICE's programs fail to provide meaningful case management and adequate services. Advocates report that, while ICE's programs purport to include referrals to legal assistance and community resources, these referrals are not tailored to an individual immigrant's requirements. Instead, the referrals usually consist of providing individuals with a sometimes outdated list of NGOs and low-cost legal service providers. Advocates also report that ICE's programs do not provide immigrants with adequate information about how the immigration system works, details regarding requirements for compliance and how to meet them, an explanation about the consequences of not attending a court hearing, or meaningful assistance in locating legal service providers. In addition, administrators in charge of ICE's programs are not able to build relationships of trust with immigrants because immigrants perceive them as law enforcement officials. This perception is not far from the truth. Local ICE officials have acknowledged that information shared by immigrants with program personnel can

be used against them in removal proceedings. The resulting lack of trust severely hinders ICE's ability to ensure compliance.

Rather than relying on its existing programs, ICE should implement true ATD programs based on partnerships with NGOs that are trusted in immigrant communities. Immigration proceedings can be very confusing, particularly for newly arrived immigrants. Having contact with a trusted organization that can answer questions, discuss problems, remind participants of their hearings and scheduled check-ins with ICE, and provide transportation if necessary provides support to the individual that makes compliance more feasible.

The government has also limited participation in the TA and FS programs to approximately 16,000 individuals per year (compared to the nearly 400,000 per year who it subjects to physical incarceration for immigration purposes). In addition to reforming these programs to make them more community-oriented and less onerous, the government should expand the programs, thereby reducing the cost of detention and allowing immigrants who do not require incarceration to remain in their communities.²⁰

COMMUNITY-BASED ALTERNATIVES TO DETENTION ARE MORE EFFECTIVE, COST-EFFICIENT, AND HUMANE THAN DETENTION

Alternatives to Detention Are Effective in Achieving the Government's Immigration Goal of Ensuring Appearance at Removal Proceedings

The government's stated purpose for immigration detention is to ensure that immigrants appear for their immigration court dates and when necessary, comply with removal orders.²¹ Evidence has shown that community-based ATDs are as effective in meeting these goals as physical incarceration. Local community-based ATDs have expertise and training in meeting the legal, cultural, and psychological needs of immigrants, refugees, and asylum seekers. By ensuring that participants have access to low or no cost support services, such as stable housing, medical care, and legal counsel, these programs increase the likelihood that participants will attend all court dates, be able to participate in the court process in an efficient manner, comply with an order of removal when applicable, or voluntarily depart if it becomes clear that they do not have a viable claim for relief.

In addition to ensuring compliance by providing services to immigrants, ATDs reduce immigration court delays. The typical individual in detention navigates the complex immigration laws without the assistance of a lawyer. Because immigrants are being held on civil immigration charges, they are jailed without the procedural safeguards afforded by the criminal justice system, including the right to a government-appointed attorney. More than 80 percent of immigrants in immigration jails lack attorneys, and few have sufficient access to current legal materials or resources.²² As a result, for the majority of individuals who participate in immigration court proceedings without counsel,²³ immigration judges are the ones who inform immigrants of their rights, ensure

their applications for relief are completed properly, and assist them through their immigration proceedings. The additional complexities of proceedings conducted *pro se* prolong the amount of time a person spends in detention and overburden the immigration court system. By providing access to low- or no- cost lawyers, ATDs can reduce the length of proceedings and alleviate the burden on immigration judges of assisting unrepresented immigrants. Immigrants with access to legal and other services are much less likely to abscond out of fear or lack of knowledge of the system.

Ms. Faye Williams is a 50-year-old woman originally from Guyana. She came to the United States as a lawful permanent resident more than three decades ago, when she was only 15. As a child in Guyana, Ms. Williams was victimized by both of her older sisters' husbands, who sexually abused her for nearly 10 years. Ms. Williams suffers from severe mental illness, including schizophrenia and depression. Over the past decade, Ms. Williams achieved a level of stability. She had a stable home in New York and a therapist who helped her receive proper treatment for her mental illness. Unfortunately, in early 2009 she was arrested, charged with selling her own prescription anxiety medication, and held in Riker's Island for nearly a year. Under New York law, Ms. Williams was an excellent candidate for "diversion," an alternative to incarceration program that provides intensive drug treatment in place of jail time for certain defendants struggling with drug addiction. However, Ms. Williams was precluded from diversion at the outset of her case because of an immigration detainer lodged by ICE which kept Ms. Williams in state custody. Only after five months of repeated phone calls and letters written by Ms. Williams' attorneys, as well as the intervention of several outside advocacy organizations, did ICE finally agree to lift the detainer, allowing for Ms. Williams' release to a drug treatment program. Now that she is no longer incarcerated, Ms. Williams will be able to get the treatment she needs while she works with her attorneys to prepare her immigration case, ensuring more efficiency and fairness in the court process.

Alternatives to Detention are More Cost Effective and Fiscally Sustainable than the Current Detention System

Immigration detention is expensive and inefficient. According to ICE Assistant Secretary John Morton's estimate, the use of detention facilities costs taxpayers on average \$122 per detained individual per day, a number that keeps rising.²⁴ For FY 2011, DHS has requested \$2.6 billion for detention and removal operations, including a \$20 million increase over FY 2010, specifically for increasing the number of available detention beds.²⁵ ICE now spends more than double what it spent in 2003 on immigration detention.²⁶

Notwithstanding ICE's claims about the estimated average length of stay, advocates for detained individuals continue to report that thousands of individuals are detained for months or even years. Immigrants face lengthy detention while they pursue relief from deportation in immigration court, pending appeal, or when deportation cannot be carried out because countries of origin do not have repatriation agreements with the U.S. These delays further increase the cost of detention.

The costs of ATD programs are substantially less than those of incarceration. The Appearance Assistance Program at the Vera Institute of Justice reported its ATD program cost only \$12 per participant per day.²⁷ By some estimates, ICE would cut its

per diem custody operations budget in half if it implemented an ATD program more broadly.²⁸

The Community Care Pilot: A Successful Australian Alternative to Immigration Detention Program

Many Western countries have already widely implemented ATDs and recognize the resulting economic and humanitarian benefits over incarceration. As part of a comprehensive reform of its immigration detention system, the Australian government began the Community Care Pilot (CCP) program in 2006. The pilot program was extremely successful. Between 2006 and 2009, 94% of participants complied with all of their reporting requirements and on average, more than two thirds of participants who lost their immigration cases elected to voluntarily depart.²⁹ Using sophisticated risk assessment tools and a case management model, CCP identified immigrant families and individuals with vulnerabilities and provided them with referrals to no- or low- cost service providers in their own communities. The Australian Department of Immigration and Citizenship (DIAC) also partnered with the Red Cross and the International Organization for Migration to provide participants with trauma counseling, emergency and supported housing, income benefits to cover basic living expenses, and access to healthcare. These services helped ensure that immigrants did not abscond and increased compliance and efficiency in immigration proceedings. In fact, the Australian government found that it was able to reduce its per diem costs by about two-thirds: detaining immigrants costs on average AU\$ 125 per immigrant per day, whereas the ATD, CCP, averages only AU\$ 39 per participant per day.³¹

Purevsuren Damdin Borjgin, a 49-year-old banker, came to the United States fleeing persecution in his native Mongolia. Mr. Borjgin is highly educated, holds an advanced degree in economics, and speaks several languages, including English. Having previously lived in the United States, Mr. Borjgin has family and connections to the United States, including a son attending college in Kansas. Mr. Borjgin sought asylum in the United States because he believed he would be killed if he stayed in Mongolia, where he had been a whistleblower at the bank where he was employed. He was detained in various prison-like facilities by ICE for almost three years until his case ended recently. With appropriate ATDs, Mr. Borjgin and other asylum seekers could remain in the community with appropriate supervision when needed rather than languishing in detention centers for years while their cases are resolved.³⁰

The Australian pilot program was so successful in resolving immigrants' legal proceedings and reducing government costs that the Australian government has made it part of a permanent program unveiled in 2009 called Community Status Resolution Services.³² Australian Senator and Minister for Immigration and Citizenship, Chris Evans, said that CCP and other pilot programs "reflect the Government's determination to implement a humane and risk-based approach to detention."³³

Community-Based ATD Programs Are a More Humane Alternative to Civil Incarceration

ATDs achieve the government's immigration goals without the enormous human toll of detention. Under the current immigration detention system, most immigrants are confined for months or even years in more than 200 local and state jails and prisons, often alongside the general criminal population. The remaining individuals are detained in prison-like conditions in corporate- or federally- owned facilities. The facilities ICE uses to hold immigrants are often located in remote areas far from legal service providers and community support.³⁴ Detained individuals are confined to jail cells, forced to wear prison uniforms, shackled by hand and foot during transport, and subjected to restrictive practices imposed by their penal institutions. In many facilities, there is little or no outdoor area or recreational space.³⁵

Rather than keeping immigrants in their communities, ICE frequently transfers people, often multiple times, to detention centers far away from their families, support networks, and lawyers. In 2007, ICE conducted 317,482 transfers—more than four times the number of transfers in 1999.³⁶

While in detention, individuals have difficulty maintaining ties with their community and face additional barriers in preparing their legal cases, often slowing down the court process. Numerous detained immigrants have suffered from untreated medical issues. Since 2003, at least 113 people have died in ICE custody, the most recent of which was an apparent suicide.³⁸ According to a report published by the *Washington Post*, the action or inaction of staff may have contributed to at least 30 of those deaths.³⁹

Casa Marianella runs two shelters for immigrants and refugees in Austin, Texas: one for adult men and women and a second for single mothers with children. Casa Marianella provides emergency shelter and support services to immigrants in the community and to individuals with asylum cases who would otherwise be detained. In addition to shelter, Casa provides case management, ESL classes, and referrals to support services. Sixty people per night or a total of 400 individuals per year live at Casa Marianella. The houses also serve as a community center for information and referrals.³⁷

A broad-based system of community-based ATDs would reduce the enormous strain on the detention system and ameliorate the mistreatment and harsh conditions immigrants face in ICE's custody. Evidence has shown that community-based ATD programs effectively balance the legitimate governmental goal of ensuring court appearance and compliance with orders of removal with the human rights of immigrants. Eligible immigrants can return to their communities, and those without sufficient community ties can be referred to shelters and social services. Immigrants with medical needs can be referred to low-cost medical providers. For example, through referrals to NGOs like the Red Cross and the International Organization for Migration, Australia's Community Care Pilot ATD program was able to identify immigrants with medical vulnerabilities. The program matched these individuals with necessary low cost medical services, thereby minimizing the cost to the government and avoiding the possibility of litigation against

the government for failing to administer appropriate medical care to individuals in detention with severe medical problems.⁴⁰

Community based ATDs also ensure that more immigrants receive access to legal representation, resulting in more fairness and efficiency in immigration removal proceedings. Not surprisingly, persons with qualified and competent legal representation secure relief at far higher rates than *pro se* immigrants.⁴¹ Enrollment in ATDs improves the chances that an immigrant will be able to locate low- or no-cost legal representation. Immigrants in ATDs are also more likely to be able to afford attorneys. Immigration lawyers typically charge a higher rate in detained cases to cover costs specific to such cases, including travel costs for visits to remote detention facilities, and charges from clients' collect phone calls.

CONCLUSION

The U.S. government should implement community-based ATD programs on a nationwide basis. It is neither fiscally prudent nor necessary for the U.S. government to continue to detain immigrants at the present rate. Established foreign ATD programs and domestic models have all demonstrated that community organizations are successful at facilitating high appearance rates by providing appropriate case management, including the necessary levels of supervision, information about the immigration system, and other critical services. In addition to being a more efficient use of government resources, ATD programs are also far more humane than full, physical incarceration.

RECOMMENDATIONS

- ICE should make individualized custody determinations for all apprehended immigrants through the use of a risk assessment tool. ICE should only be able to impose physical incarceration if it articulates why a person is not suitable for release, parole, bond, or an ATD program.
- ICE should partner with community-based non-governmental organizations with expertise in providing ATD services, including screening, legal referrals and social services.
- When ICE chooses to detain an individual despite the availability of ATDs, it should provide that individual with a written statement of reasons for detention.
- Electronic monitoring is not an ATD. ICE should only impose electronic monitoring if: (a) ICE would otherwise hold an individual in a detention facility, and (b) ICE demonstrates that no other less restrictive measure will ensure appearance at removal proceedings. ICE should also mandate a periodic review of each individual's case when highly restrictive supervision and monitoring mechanisms are imposed.

- ICE should collect data on an ongoing basis and conduct periodic evaluations of ATD programs to monitor the cost-efficiency and effectiveness of the programs. ICE should make the data and evaluation results publicly available.

¹ This report was prepared on behalf of Detention Watch Network (DWN) by Stephen Dekovich, Michelle Parris, Michelle Reaves, Jessica Spradling, and Jayashri Srikantiah of the Stanford Law School Immigrants' Rights Clinic, in collaboration with Jacki Esposito of DWN. We thank the many advocates and immigrants who gave their expertise and their stories to the creation of this report, especially Leslie Vélez, Michelle Brané, Oren Root, Grant Mitchell, Greg Chen, Jen Stark, Heidi Altman, Reverend Seth Kaper-Dale, and Jennifer Long.

² *The Fiscal Year 2011 Budget for U.S. Immigration and Customs Enforcement Before the H. Comm. on Appropriations Subcomm. on Homeland Sec.*, 111th Cong. (March 18, 2010) [hereinafter *Hearings*] (statement of John Morton, Assistant Secretary, Department of Homeland Security), available at http://www.dhs.gov/ynews/testimony/testimony_1271443011074.shtm; *ICE Budget Fact Sheet – Fiscal Year 2010*, <http://www.ice.gov/pi/news/factsheets/index.htm>.

³ EUROPEAN COUNCIL ON REFUGEES IN EXILE, RESEARCH PAPER ON ALTERNATIVES TO DETENTION (1997), available at <http://www.unhcr.org/refworld/docid/3c0273224.html>; Joan Petersilia, *A Decade of Experimenting with Intermediate Sanctions: What Have We Learned?* 1 JUST. RES. & POL. 9 (1999).

⁴ AMNESTY INT'L, IRREGULAR MIGRANTS AND ASYLUM-SEEKERS: ALTERNATIVES TO IMMIGRATION DETENTION (April 2009), available at <http://www.amnesty.org/en/library/asset/POL33/001/2009/en/08b817ac-d5ae-4d47-a55c-20c36f7338cf/pol330012009en.pdf>.

⁵ *ICE Budget Fact Sheet - Fiscal Year 2010*, <http://www.ice.gov/pi/news/factsheets/index.htm>.

⁶ *Hearings*, *supra* note 2.

⁷ *Id.*; see also HUMAN RIGHTS WATCH, *LOCKED UP FAR AWAY 1* (2009), available at <http://www.hrw.org/node/86789> (according to Human Rights Watch, 378,582 immigrants were detained in 2008).

⁸ DORA SCHIRO, ICE IMMIGRATION DETENTION OVERVIEW AND RECOMMENDATIONS 6 (October 6, 2009), available at http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf.

⁹ See generally *id.*

¹⁰ Karen Keller, *Highland Park Church Helps Illegal Immigrants Avoid Deportation*, N.J. STAR-LEDGER, Mar. 2, 2010, available at http://www.nj.com/news/index.ssf/2010/03/highland_park_churchs_immigrat.html.

¹¹ Nina Bernstein, *Church Works With U.S. To Spare Detention*, N.Y. TIMES, Dec. 12, 2009, available at http://www.nytimes.com/2009/12/13/nyregion/13indonesians.html?_r=1.

¹² *Id.*

¹³ See generally OREN ROOT, *THE APPEARANCE ASSISTANCE PROGRAM: AN ALTERNATIVE TO DETENTION FOR IMMIGRANTS IN U.S. IMMIGRATION AND REMOVAL PROCEEDINGS* (2000), available at http://www.vera.org/download?file=209/aap_speech.pdf.

¹⁴ See *Detention Reform Accomplishments*, Aug. 20, 2010, <http://www.ice.gov/dro/detention-reform/detention-reform.htm>.

¹⁵ Daniel Zwerdling, *Electronic Ankle Monitors Track Asylum Seekers in the U.S.*, NPR, Mar. 2, 2005, available at <http://www.npr.org/templates/story/story.php?storyId=4519090>.

¹⁶ *Id.*

¹⁷ NAT'L IMMIGRATION LAW CTR., *HOW ADVOCATES PREPARED FOR AND WHAT THEY LEARNED FROM RECENT RAIDS IN VAN NUYS*, available at http://www.nilc.org/immsemplymnt/wkplce_enfrcmnt/wkplcenfr025-b.htm.

¹⁸ Camille T. Taiara, *House Arrest*, S.F. BAY GUARDIAN, available at http://www.sfbg.com/39/13/news_immigrants.html.

¹⁹ NAT'L IMMIGRATION LAW CTR., *HOW ADVOCATES PREPARED FOR AND WHAT THEY LEARNED FROM RECENT RAIDS IN VAN NUYS*, available at http://www.nilc.org/immsemplymnt/wkplce_enfrcmnt/wkplcenfr025-b.htm.

²⁰ ICE also denies participation in its programs to those noncitizens subject to mandatory custodial supervision under current immigration law.

²¹ SCHIRO, *supra* note 8, at 2.

²² HUMAN RIGHTS WATCH, *supra* note 7, at 42-43; Robert Katzmann, *The Legal Profession and the Unmet Needs of the Immigrant Poor*, 21 GEO. J. LEGAL ETHICS 3, 7-10 (Winter 2008).

²³ Between October 1, 2006, and September 30, 2007, approximately 84 percent of individuals in detention were not represented by counsel. ABA COMM'N ON IMMIGRATION, REFORMING THE IMMIGRATION SYSTEM § 5-8 (2010), *available at*

http://new.abanet.org/Immigration/PublicDocuments/aba_complete_full_report.pdf.

²⁴ *Hearings*, *supra* note 2.

²⁵ *Id.*

²⁶ NAT'L IMMIGRATION FORUM, THE MATH OF IMMIGRATION DETENTION (2009), *available at* <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.

²⁷ ROOT, *supra* note 13.

²⁸ NAT'L IMMIGRATION FORUM, *supra* note 22 (estimating based on 18,690 noncriminal detainees—out of 32,000—held on January 25, 2009 with a cost of \$141 per detainee per day, and \$13 per ATD participant per day).

²⁹ INT'L DETENTION COALITION, DETENTION REFORM AND ALTERNATIVES IN AUSTRALIA 10, *available at* <http://idcoalition.org/idc-briefing-paper-detention-reform-alternatives-in-australia/>; *see also* NAT'L IMMIGRANT JUSTICE CTR., CREATING "TRULY CIVIL" IMMIGRATION DETENTION IN THE UNITED STATES: LESSONS FROM AUSTRALIA (May 2010).

³⁰ For more on Mr. Borgjin's story, *see* Anna Gorman, *350 Immigrants Held for More than 6 Months, U.S. Says*, L.A. TIMES, May 20, 2010, *available at* <http://articles.latimes.com/2010/may/20/local/la-me-0520-immig-detain-20100520>.

³¹ INT'L DETENTION COALITION, *supra* note 29, at 11.

³² *Id.* at 8.

³³ Chris Evans, *Budget 2009-10 - New Directions in Detention*, May 12, 2009, <http://www.minister.immi.gov.au/media/media-releases/2009/ce01-budget-09.htm>.

³⁴ The federal government contracts with approximately 240 local jails and prisons in order to rent bed space for immigration detainees. These agreements are known as Intergovernmental Service Agreements or "IGSAs."

³⁵ NAT'L IMMIGRANT LAW CTR., A BROKEN SYSTEM (2009), *available at* <http://www.nilc.org/immlawpolicy/arrestdet/A-Broken-System-2009-07.pdf>.

³⁶ HUMAN RIGHTS WATCH, *supra* note 7, at 29.

³⁷ *See generally* Anna Hanks, *Room at the Inn: Casa Marianella Gives Homeless Immigrants a Badly Needed Hand*, AUSTIN CHRON., June 16, 2000, *available at*

<http://www.austinchronicle.com/gyrobase/Issue/story?oid=%3A77627>.

³⁸ *List of Deaths in ICE Custody, October 2003 - July 27, 2010*,

<http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf>; *ICE Detainee Passes Away at Orleans Parish Prison*, <http://www.ice.gov/pi/nr/1007/100718neworleans.htm>.

³⁹ Dana Priest and Amy Goldstein, *Careless Detention*, WASH. POST, May 11-14, 2008, *available at* http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html.

⁴⁰ INT'L DETENTION COALITION, *supra*, note 29, at 7.

⁴¹ *See* A. Schoenholtz and J. Jacobs, *The State of Asylum Representation: Ideas for Change*, 16 GEO. IMMIGR. L.J. 739, 739-740 (2002) ("represented asylum cases are four to six times more likely to succeed than pro se ones").

For more information on immigration detention, please visit Detention Watch Network's website at www.detentionwatchnetwork.org