



## The Real Alternatives to Detention

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Immigration detention is growing at an unprecedented rate despite a wide spectrum of alternatives that ensure due process at a fraction of the cost. In 2019 Congress authorized U.S. Immigration and Customs Enforcement (ICE) to detain approximately 45,000 people each day, yet ICE – in a continual pattern of overspending – now detains more than 52,000 daily.<sup>1</sup> Immigration detention is costly, and harmful. Smarter and more compassionate alternatives have been repeatedly proven more efficient, effective, and humane.

ICE's current alternative to detention (ATD) program often contravenes established best practices, most notably due to the program's operation by a private prison company subsidiary. Particularly in light of the refugee situation at the southern border, ICE must replace these ATD programs with more effective and appropriate programs that are truly *alternatives* to the incarceration of immigrants, rather than a mere expansion of ICE's enforcement infrastructure. ICE must also be held to account for its misleading measurement and reporting of the effectiveness of its current ATD programs.

### WHEN AND WHY SHOULD ALTERNATIVES BE USED?

In place of mass detention, the government should use a long-existing spectrum of alternatives to detention, including release, affordable bond, or other tools of support. Many immigrants and asylum seekers already have strong community ties and robust incentives to appear in immigration court, and for certain populations release to the community during case processing is appropriate. Some asylum seekers and migrants may need additional support to understand the immigration process. Individualized case management services provided by experienced not-for-profit organizations in the community have been shown to preserve family unity and human dignity while ensuring compliance with court-imposed obligations.

[Evidence-based inquiries](#) into existing ATD programs have shown that ATD programming is most effective when rooted in an approach that respects human dignity and provides holistic social and legal support services to participants. ATD participants are consistently more likely to trust in and comply with court-imposed obligations if they feel their case is being processed in a transparent and fair manner that has been explained to them fully.

The following **guiding principles** should inform any ATD program.

- Alternatives to detention should **reduce reliance on institutional detention**, not place additional restrictions on immigrants who – based on an individualized assessment – should be released.
- Anyone **whose appearance can be assured by an ATD should not be detained**. 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.
- ATD should be grounded in **well-proven principles of case management** as provided by experienced community service providers.
- ATD programs should place the **least onerous restrictions** on participants possible, instead of routinely relying on electronic monitoring programs, including ankle monitors.
- ICE should implement a **clear, flexible, and transparent process for enrollment** and de-enrollment from ATD.

<sup>1</sup> As of June 1, 2019, ICE had 52,465 people in detention. See ICE, "ICE Currently Detained Population," <https://www.ice.gov/detention-management#tab2>.

## COUNTERING THE GOVERNMENT'S NARRATIVE ON ALTERNATIVES

ICE currently contracts with GEO Care LLC to operate a range of conditions of release that rely on some form of electronic monitoring and/or limited case management support. As of June 2019, over 100,000 individuals were placed on some form of ATD.<sup>2</sup> These programs are not community based and do not utilize a true case management centered approach. Although they do not meet key best practices, these ATD measures **cost a fraction of the costs of detention** and those enrolled in these ATDs tend to have **high compliance rates with immigration appointments and court hearings**.

Administration officials regularly try to undermine ATD by saying they are ineffective and costly. These claims are frequently based on manipulated presentations of data. The administration's claims regarding ATDs should be viewed in light of the following *facts*:

- **ATDs cost far less than detention, even if one is enrolled in ATD longer than in detention.** Using the government's own calculations of the cost of detention and ATD, a [2014 Government Accountability Office \(GAO\) report](#) found that the daily cost of ATD was less than 7% of that of detention.<sup>3</sup> Although participants may be enrolled in 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 in ATD for 1,229 days before time in ATD and time in detention cost the same amount.** As of June 2019, the average person was enrolled in an ATD for just 502.5 days.<sup>4</sup>
- **ICE's current ATDs are extremely effective at ensuring compliance.** ICE's current ATD program has shown high rates of compliance with immigration check-ins and hearings. The [GAO](#) found that 95% of those on "full-service" ATDs (which include case management) appear for their final hearings. Data from Contract Year 2017 from BI, Inc.,<sup>5</sup> showed a 99.27% appearance rate at immigration court hearings and a 91.5% appearance rate at final hearings for those enrolled in its programming that includes some case management.<sup>6</sup>
- **Release on recognizance and community-based case management alternatives are also extremely effective at ensuring compliance.** [Numerous studies](#) of dozens of ATD programs around the world have found community-based programming to maintain average compliance rates of 90 percent or higher. Here in the United States, a [study](#) showed that 86 percent of families who were released from ICE detention from 2001 to 2016 appeared for *all* immigration court hearings, a number that rose to 96 percent if the family applied for asylum. ICE's own discontinued [Family Case Management Program \(FCMP\)](#) ensured that families received more tailored caseworker support. **FCMP had compliance rates of over 99% with court hearings and ICE appointments, and saw compliance with removals and departures, all at a cost far below that of detention.**
- **ATDs should NOT be measured by the cost per deportation, and statistics on absconding should be treated with skepticism.** First, the goal of ATD is not to effectuate removal, but to promote compliance with immigration requirements and outcomes and to assure participants' access to needed stabilization and support services. Second, ATDs do in fact promote compliance with removal, especially in programs that include case management and safe repatriation programming. On this point the administration frequently cites misleading data, in part because, as GAO found in its report, the majority of ATD participants are terminated from ATD prior to ever receiving a removal order, meaning data on removals are from a disproportionately small subset of ATD participants to begin with. The administration additionally often emphasizes the "cost of removal" as a measuring stick of ATD. In addition to not

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<sup>2</sup> As of June 1, 2019, ICE reported a total ATD enrollment of 102,168 people. 47,546 people were placed on electronic monitoring with a GPS ankle bracelet, 43,427 were enrolled in telephonic monitoring, and 11,195 were monitored through a smartphone application. See *Ibid*.

<sup>3</sup> The Department of Homeland Security (DHS)'s fiscal year [\(FY\) 2020 Congressional Budget Justification](#) notes that it costs \$139.07 per day to jail an adult immigrant in ICE custody and \$319.37 for an individual in family detention. The average cost per ATD participant would be \$4.33 per day.

<sup>4</sup> See ICE, Detention Management, "ATD Average Length in Program (ALIP): FY19 through 06/01/2019," <https://www.ice.gov/detention-management#tab2>.

<sup>5</sup> BI, Inc. has long been ICE's contractor for its Intensive Supervision Appearance Program (ISAP) ATD. BI, Inc. is a company of GEO Group, the for-profit private prison company that also operates many ICE detention facilities around the country. ISAP is in its third contracting period, and is currently known as ISAP III.

<sup>6</sup> BI, Inc., *ISAP III Annual Report*, Calendar Year 2017. Data for ISAP III's technology-only component, in which ICE directly uses ISAP's technology for electronic monitoring, is not available. Data reflects the most recent data available.

reflecting the purpose of ATD, this talking point is also inaccurate; as described above, by virtually every calculation, ATDs are significantly less costly than detention over the lifetime of a case.

- **DHS continues to request more funding to increase capacity of its ATD, contradicting its public claims against their effectiveness.** Despite public testimony to the contrary, ICE has for several years told Congress that ATDs are a useful tool that enhance ICE's operational effectiveness and increase compliance. Most recently, in its [FY 2020 Budget Justification](#), DHS notes that "ISAP [Intensive Supervision Appearance Program] III enhances ICE's operational effectiveness," and that the "ISAP III contract enables ICE to significantly increase participant compliance with release conditions, including attending immigration hearings, obtaining travel documentation, and making travel arrangements for departure from the United States."
- **ICE must improve tracking and increase transparency around its current ATD program.** ICE continues to be opaque in its tracking and reporting of ATD data. For example:
  - No data is available on the compliance rates of those who are terminated from ATD programs, even though these former participants may continue to comply with immigration requirements.
  - DHS's "Absconder Rate" in its FY 2020 Congressional Justification measures the number of cases of individuals who failed to comply with the terms of an ATD against those *terminated* from ATD programs for any reason (which can be favorable, neutral, or negative), not against *all* participants in ATD program. This dramatically inflates the "absconder rate." Furthermore, a termination from an ATD program for absconding does not mean a participant did not later appear in court or comply with removal.
  - ICE has not publicly shared its criteria, policies, and guidance on how individuals are selected for enrollment into ATD, or how those individuals are shifted to more or less restrictive conditions of release over the course of their case.

## WHAT KINDS OF ALTERNATIVES ARE APPROPRIATE AND EFFECTIVE?

Today, ICE considers ISAP III its exclusive form of ATDs. While ISAP III does, in some cases, incorporate case management, these programs are generally not consistent with evidence-based standards for best practices around release. The key to ATDs' success is the extent to which immigrants are oriented as to their rights and provided with robust support for legal, medical, and social service needs. When these elements are present, [studies](#) show that ATD participants trust the fairness of the system and are very likely to comply with obligations placed upon them. When migration management is driven instead by deterrence-oriented policies such as detention, immigrants are not given the tools needed to comply with the immigration process and are, therefore, set up to fail.

Community- and case management-based alternatives have, in fact, proven successful here in the United States in a formal ICE alternative to detention (ATD) program that operated from January 2016 through June 2017, when the Trump administration [terminated](#) it. **The Family Case Management Program (FCMP)** had as its cornerstone principle, as borne out by [international research](#) and prior, non-government-funded programs, that **individualized case management services lead to an understanding of the immigration process and high compliance with the government's immigration requirements**. Families enrolled in FCMP did not wear ankle monitors. The program boasted compliance rates of over 99% with immigration check-in appointments and with court appearances, while costing only \$38 per family per day. A small number of families in the program also either voluntarily chose to depart or complied with removal orders. **Given the program's early termination, the vast majority of families were still in proceedings, meaning that ICE cannot make any broad claims concerning a failure to comply with negative immigration outcomes.**

Community-support ATD models are far more appropriate and function best when operated directly by local community service providers. While successful, and despite partnerships with local organizations, [FCMP](#) still suffered from the fact that it was primarily contracted to a GEO Group subsidiary that lacked the depth of expertise and local ties of community-based service organizations.<sup>7</sup> [Holistic programs](#) that offer case management services and facilitate access to legal counsel and safe and affordable housing substantially increase compliance without using electronic monitoring.

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<sup>7</sup> ICE required GEO Care to partner with community-based organizations only after awarding the contract, but GEO Care's role remains problematic. Any future iteration of a program like FCMP should be contracted directly to not-for-profit organizations with proven experience in serving immigrants and refugees.

In addition to the FCMP, recent examples of cost-saving and effective ATD programs here in the U.S. include:

- ***\$50 a day for an entire family to receive housing and wrap-around services:*** Lutheran Immigration and Refugee Service (LIRS) ran 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 again [provided case management support services to families](#) reunited after separation due to the government's zero-tolerance policy; its comprehensive services – provided over a 90-day period in 2018 – cost an average of \$14.05 per individual family member per day. The U.S. Conference of Catholic Bishops (USCCB) also provided 90 days of case management services to reunited families during this same time period, at an average cost of \$16 per day per family unit. Given that the daily cost of family detention is approximately \$319 per individual, **these services represent significant potential savings for far more appropriate treatment if the government invested in scaling case management.**
- ***97% appearance rate:*** Two national alternatives to detention programs initiated in recent years reported 97% appearance rates in immigration court. From January 2012 to December 2015, LIRS ran the [Community Support Initiative](#) to screen vulnerable immigrants in ICE custody for release and enrollment in community-based case management services. 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 cost as little as \$7 dollars a day and an average of \$24 a day per individual. From January 2014 to March 2015, the USCCB (in partnership with ICE) ran a community support alternative to detention program that utilized case management and served primarily vulnerable individuals without community ties.
- The Immigration Naturalization Service (INS) successfully funded and/or partnered on the implementation of additional case management alternatives, including the Appearance Assistance Program (AAP) administered by the Vera Institute of Justice, from 1997-2000. Participants were asylum seekers, noncitizens with criminal convictions facing removal, and undocumented workers. The program saved taxpayers \$4,000 per participant, had a 91% overall appearance rate at required hearings, and a 93% appearance rate for asylum seekers.

## ALTERNATIVES ARE ONE CRUCIAL PART OF THE PUZZLE

True case management ATDs are effective and cost-efficient, and 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](#) show that immigrants with legal counsel are more likely to obtain successful immigration outcomes; conversely, detained immigrants in proceedings who lack representation are about ten times less likely to obtain relief. Represented individuals are much more likely to attend immigration court proceedings, apply for relief from deportation, and obtain relief from deportation. For example, recent [data](#) shows that nearly 100% of represented mothers placed on the Executive Office for Immigration Review's (EOIR) "adults with children" docket complied with their court requirements. Yet detention precludes fundamental access to counsel: only 14% of those in detention are represented by counsel.
- ***ATD programs help facilitate access to counsel, which increases efficiency and reduces the costs of the immigration courts.*** The immigration courts are facing an [unprecedented backlog](#) of nearly 900,000 pending cases. An [EOIR-commissioned report](#) revealed that lack of representation may contribute to delays in court processing. In fact, [immigration judges have concluded](#) that when noncitizens are represented by counsel, judges are able to resolve cases more expeditiously.

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