

Alternatives to Immigration Detention: An Overview

The United States has broad authority to detain certain categories of immigrants, migrants, and others seeking humanitarian protection as their proceedings wind their way through the immigration legal system. This detention is “civil” by definition (as opposed to criminal), meaning that immigration detention should not be punitive in nature.¹ Despite this technical legal distinction, most of the immigration detention infrastructure is indistinguishable from the criminal detention context, in some instances using the same facilities and private corporations to operate detention centers and jails.²

Immigration and Customs Enforcement (ICE) states that the purpose of immigration detention is twofold: 1) to protect the wider community from those noncitizens who may pose a safety risk; and 2) to ensure that the individual will comply with any immigration proceedings (including removal). For the last two decades, there has been increasing interest in the United States and abroad to create and expand alternatives to detention for noncitizens who would otherwise be sent to immigration detention centers. This is due to an increasing understanding that detention is fundamentally harmful and inhumane—especially to immigrants of color—³ that there are alternatives that can achieve similar objectives to those the government is pursuing, and that there has been very little meaningful reform of immigration detention itself. For example, the current standards that govern the conditions of most immigrant detention centers, the Performance-Based National Detention Standards, were explicitly based on criminal pre-trial detention and were written in 2011, with minor updates made in 2016 and no updates in the years since then. Study after study has shown that alternatives to detention programs are generally more humane and more cost-effective than immigration detention.⁴

Alternatives to detention (ATDs) are defined as “any legislation, policy or practice, formal or informal, that ensures people are not detained for reasons relating to their migration status.”⁵

ATDs can refer to a wide range of programs that run the gamut from no governmental intervention to extensive surveillance and restrictions on liberties. Generally, alternatives to detention in the immigration context fall into the following categories:

1. Release on your own recognizance (i.e., no detention and no conditions on release)
2. Release on conditions
3. Release on bail/bond or other surety
4. Community-based supervised release or case management
5. Designated residence at a specific accommodation center
6. Electronic tagging and/or tracking
7. Home curfews⁶

While many countries internationally utilize many or all of these tools, the United States government has a fairly narrow definition of alternatives to detention and has been increasingly focused on programs that expand surveillance and restrictions on movement of noncitizens, as opposed to using alternatives as a means of reducing the overall use of detention.

Alternatives to Detention in the United States

The United States has by and large adopted a “detention first” policy towards individuals who may be inadmissible or removable—often detaining people first and only then providing mechanisms for a detained migrant to request release from detention.⁷ In 2004, ICE piloted its first official alternatives to detention program.⁸ This was an introduction to the now ubiquitous Intensive Supervision Appearance Program (ISAP). ISAP began as a program in eight cities with a select number of people assigned to “case specialists” and involved a variety of ways for ICE to track the location of the participant, including electronic ankle monitors, in-person check-ins, and home visits.⁹ ISAP was from the beginning a program operated by BI Incorporated, now a subsidiary of The GEO Group, Inc., a large private prison company that specializes in operating private, for-profit immigration detention centers.¹⁰ ISAP, now in its fourth iteration, has ballooned to over 100,000 enrolled, up from the 200 it began with in 2004.¹¹ Today, BI maintains the contract to operate ISAP IV, even as criticism of the mismanagement of the program and mistreatment of immigrants in the program mounts.¹²

NUMBER OF ISAP PARTICIPANTS BETWEEN 2004 AND PRESENT



ICE also began its ATD pilots from the beginning with forms of electronic monitoring. In addition to the public-private partnership with BI, ICE ran its own ATD pilot at the same time. In 2004 it began the Electronic Monitoring Device program (EMD), which used a combination of telephonic check-ins with voice recognition software, and “home curfews” using radio frequency monitoring.¹³ In 2008, ICE decided to combine ISAP, EMD, and a third program into one ATD program which became ISAP II.¹⁴ This is has been the basis for nearly all official ATD programming in the United States since then.

ATD policies embraced by the government have been narrow—almost exclusively pursuing programs whose primary goal is to make future enforcement and removal more expeditious and those that are primarily focused on ensuring compliance.¹⁵ These programs emphasize monitoring and surveillance, coordination with ICE, and consequences for non-compliance.

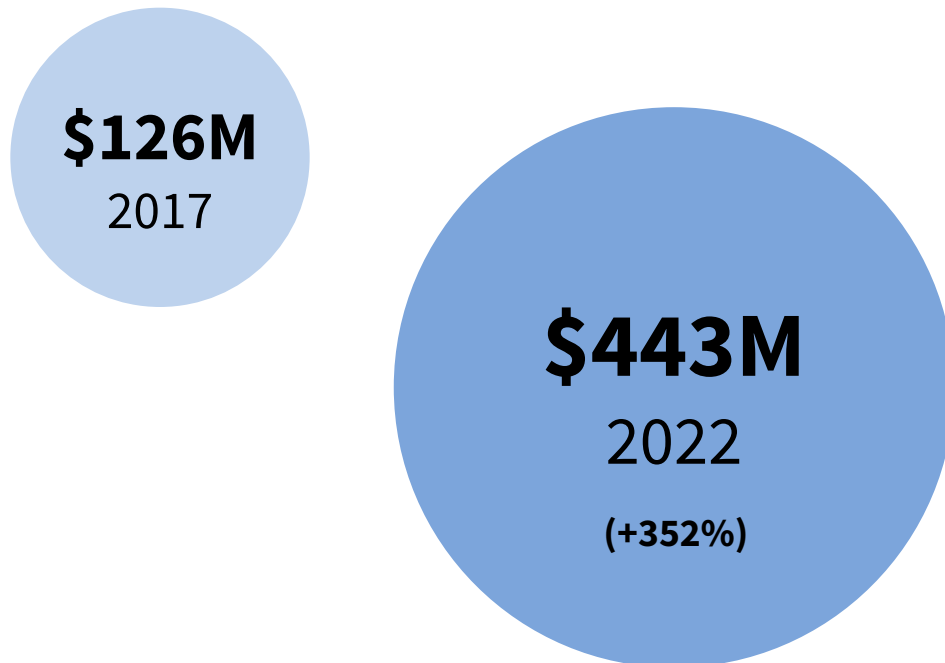
Research shows, however, that other aspects of a person’s case—like having legal representation—have a greater impact on ensuring that non-detained individuals will appear for court and otherwise comply with proceedings.¹⁶

Many advocates have argued that these ATDs have not been used in the United States as true *alternatives* to detention. An increase in enrollment in ATDs over the last decade has not corresponded with a significant decrease in detention numbers. For example, the average daily number of people in ICE detention centers rose from 19,254 in FY 21 to 21,709 in FY 22, even while the number of people in ATD programs increased by nearly 47,000 over that period.¹⁷ Rather than serve as alternatives to *detention*, these programs have at times served as alternatives to *release without conditions*. By adopting this framework, the United States has both expanded immigration detention while simultaneously expanding government control over migrants and immigrant communities in the name of “alternatives.”¹⁸

United States Government-Implemented ATDs

ATD programs are primarily operated by ICE in the United States. The budget for ATDs has steadily risen in the last five years, going from \$126 million to enroll 53,000 individuals in ATDs in Fiscal Year (FY) 2017 to \$443 million in FY 2022.¹⁹ As of the date of publication, ICE was monitoring 182,607 people in its ATD programs.²⁰ These programs currently come in two forms: The Intensive Appearance Supervision Program (ISAP), and Extended Case Management Services (ECMS), which operates as an add-on to the ISAP program.²¹

GROWTH IN ATD PROGRAM BUDGET BETWEEN 2017 AND 2022



Intensive Appearance Supervision Program (ISAP)

The current iteration of ISAP—ISAP IV—includes a combination of human monitoring, such as in-person check-ins or home visits, and electronic monitoring, such as GPS tracking via an ankle monitor, or the use of a smartphone app and facial recognition.²² Of the 181,369 people currently being monitored in ISAP IV, 28,746 are being monitored using ankle monitors, 126,844 are being monitored using the SmartLINK smartphone app, and 34,137 are being monitored using telephonic check-ins.²³

MONITORING METHODS USED IN ISAP IV



ISAP IV is implemented through a contract between ICE and BI Incorporated.²⁴ Monitoring with ISAP IV is more cost-effective than detention, with detention costing between \$126 to \$182 per person per day, and alternatives costing as little as \$0.70 to \$17 per person per day.²⁵

The use of GPS ankle monitors has come under significant criticism in recent years. Some simply describe it as “cyber prison.”²⁶ People enrolled in the ISAP program who are placed on ankle monitors have described both physical and emotional harm caused by the devices. GPS ankle monitors severely restrict a person’s freedom of movement.²⁷ They limit where a person can go geographically and also require a person to be able to charge the monitor regularly. People have also reported physical pain with the ankle bracelets. These monitors often take an emotional toll as well, with people who have fled harm or persecution (sometimes perpetrated by governments) finding themselves under intense government surveillance and feeling like they are essentially still imprisoned.

Extended Case Management Services (ECMS)

In 2019, DHS incorporated some of the aspects of the Family Case Management Program—a highly successful pilot program for a community-based ATD—as an addition to the then ISAP III program.²⁸ People enrolled in ECMS are given case managers (hired by The GEO Group) to help provide referrals and information to participants.²⁹ However, even though the program has now been in place for over a year, very few people receive these services. Of 182,607 people in ATDs as of March 2022, only 1,238 are enrolled in ECMS.³⁰

Community-Based Programs: True Alternatives

The United States is not the only nation struggling with how to humanely treat migrants. Over the past few years, a set of best practices for alternatives to detention has emerged internationally. These higher-quality ATDs are ones which do not also increase the surveillance and monitoring of immigrants and are community-based, meaning they are operated in the community where participants reside by organizations or entities that are closely tied to the community and its resources. Additionally, many include a “case management model,” which generally includes providing a migrant with wraparound social and legal services intended to facilitate the client’s ability to meaningfully participate in their immigration proceedings while having their needs met. Some of the other best practices include:³¹

1. They seek to remove obstacles to compliance for clients and provide services and support that are known to increase compliance, such as legal services and housing;
2. They are focused on developing trust between the client and the non-governmental organization operating the case management system and separate service provision from reporting of non-compliance.

There are a number of examples both past and present of programs that attempted to meet some or all of those parameters.

Family Case Management Program (“FCMP”)

The Family Case Management Program was a short-lived pilot program that ran from January 2016 to June 2017, when it was terminated early by the Trump administration. It was the United States’ first government-supported attempt at a purely case-management model for an ATD.³² At a cost of \$38 per person per day, it was also significantly less expensive than detention.³³

The FCMP was designed with significant input from non-governmental organizations. However, when it came to contracting for services, DHS accepted the proposal from GEO Care, a division of GEO Group that did not have case management experience in the immigration context and was closely tied to the private prison industry. Still, the program is generally considered a success, including by ICE, with an over 99% compliance rate with ICE check-ins and court appearances.³⁴

The program served 952 heads of households and over 2,000 total participants in five cities.³⁵ Service provision included referrals to pro bono legal services, referrals and navigation for access to housing, referrals for medical services, English language classes, and assistance with obtaining identity documents.³⁶

While the FCMP was terminated before most cases were completed, it did provide a baseline for how a case management based ATD could function successfully. Advocates argue that FCMP could have been even more effective if it was operated by non-profit organizations who have extensive experience with immigration case management, and required less cooperation with ICE, which made it more difficult for the program operators to develop trust with clients.

Emergency Family Case Management Services for Reunited Families

In 2018, the Trump administration, through its “Zero Tolerance” policy, separated thousands of children from their parents.³⁷ Due to a court order issued in June 2018, the government was forced to work to quickly reunify these children with their families. To do so, they requested that two organizations who work extensively with refugee resettlement—Lutheran Immigration and Refugee Services (LIRS) and the United States Catholic Council of Bishops—set up an emergency case management system for these families (without funding).³⁸ Local non-profit legal service providers volunteered and provided basic information on the immigration process and other referrals. LIRS provided referrals for housing and medical care and assisted in document retrieval and transportation for families to get to their final destinations.

LIRS reported that while the program was a success in terms of ensuring that families appeared for future court dates and check-ins, the cost without government support was unsustainable.³⁹ Additionally, providing referrals for legal service provision was not sufficient to ensure actual legal representation, as legal service providers were also understaffed and lacking in resources.⁴⁰

Other Community-Based Examples

There are other examples of alternatives to detention programs run by non-governmental, non-profit organizations, dating back to the 1990s. Some further examples are:

- From 1997 to 2000 the Vera Institute of Justice was contracted by the then Immigration and Naturalization Services (INS) to design and conduct a pilot project in New York City. In this project, Vera screened people in detention for possible participation in what was known as the Appearance Assistance Program.⁴¹ This program involved the non-profit organization “supervising” the release of people from immigration detention through many of the same methods the government uses today, such as telephonic check-ins, home visits, and court accompaniment. The Appearance Assistance Program was a success at ensuring that immigrants appeared in court, with a 90% compliance rate. However, it also suffered from some of the same concerns that exist today among ATD programs, such as being directly funded by an immigration enforcement agency and a requirement that the non-profit report to that agency if a client was out of compliance with the program, thus creating a conflict of interest.⁴²
- Currently in Chicago, there is a program that is much closer to the widely-adopted principles for a “true” alternative to detention. Operated by the Interfaith Community for Detained Immigrants (ICDI), their Harbor Hospitality provides asylum seekers recently released from detention with case management, local service connections, legal service referrals and accompaniment, and post-transition services.⁴³ The program reports high levels of compliance.⁴⁴

Alternatives to Detention in the Future

While the United States has so far largely embraced policies that use alternatives to detention as alternatives to release without conditions and as means of increasing the overall capacity of the surveillance and restrictions on noncitizens, there are numerous opportunities to expand the range of alternatives and embrace policies that are proven to be effective in supporting a noncitizen's navigation of the immigration legal system.

Internationally, networks of wraparound services developed and implemented by non-governmental, community-based organizations with proven experience working with these communities can be found in many places. Programs that give noncitizens access to support for housing, employment, language instruction, and legal representation have been demonstrably successful as humane, effective alternatives to detention that can reduce overall numbers of people in detention.

There are also indications that ICE is aware of other options for how alternatives to detention could operate. In *Garcia Ramirez v. ICE*, as part of the injunction, ICE is required to try to find an alternative to detaining individuals when they turn 18 years old and "age out" of the government programs operated to house them. ICE is required to contact five shelters or group homes as alternatives to detention. Many of these shelters provide wraparound services.⁴⁵

But it has been the emergence of a global pandemic that has revealed other possibilities for alternatives to detention. Several countries, hoping to avoid confining people to close quarters while COVID-19 was first spreading, began to reduce the overall number of people being detained in the first place, and released significant numbers of people from detention.⁴⁶ In some places, such as Spain, this was accompanied by extraordinary work permits to allow for increased support in the labor sector.⁴⁷ The need for additional accommodations for individuals released also led to extensions of housing accommodations.⁴⁸ The state of emergency exposed the need for additional infrastructure for community-based alternatives to detention, but also demonstrated that with political will, large numbers of people could be provided with the kinds of services that are proven to support noncitizens through the immigration legal system.

Conclusion

The United States can and should implement alternatives to detention that serve to reduce the overall detention population, provide services that are known to increase compliance with immigration proceedings, and reduce obstacles to compliance. These "true alternatives" to detention are more humane, more cost-effective, and more in line with international standards. Separating these services from immigration enforcement and providing them in a case-management model operated by organizations with extensive experience is the path forward. The United States government has demonstrated a commitment to case management as a model. It now needs to heed the advice of non-profit, non-governmental organizations on best practices for implementation.

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